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DATA BASE SPECIFICATTONS FOR RESEARCH ON THE SYSTEM RESPONSE TO SPOUSAL VIOLENCE (TORONTO)

NO. 1984-5

Ministry of the Solicitor General of Canada

Secretariat

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I

INTRODUCTION

Hickling-Johnston Limited was commissioned by the Department of the Solicitor General of Canada to assist the Metropolitan Toronto Justice Advisory Committee on Spousal Abuse in assessing the feasibility of creating a data base from which research on the criminal justice system's responsiveness to spousal abuse could be undertaken.

The Justice Advisory Committee, representing the central figures in Metro Toronto's criminal justice system and social support system, aims to:

- ascertain the responses to interspousal violence by different components of the legal system in Toronto;
- identify problems in the responses;
- develop and monitor strategies for the prevention of interspousal violence;
- develop and monitor strategies for the improvement of responses in the various components of the legal system.

A two-phased research project, funded by the Department of the Solicitor General of Canada has been designed to support the work of the Committee. Phase I involves the definition of a data base capable of monitoring the responses of different components of the criminal justice and family law legal systems to spousal abuse. In Phase II, research analysts will assemble and use the data base defined in Phase I to address research issues of interest to the Committee. Analysis is intended to include interviews with representative samples of victims.

In carrying out Phase I of this two-part study, Hickling-Johnston consultants conducted interviews with a wide range of representatives of the justice system, including most members of the Committee. A list of interviewees is found in Appendix A. A progress report was presented to the Committee on February 14, 1984, in which our preliminary findings and emerging directions were addressed.

This report records our findings, conclusions, and recommendations for creating a data base which will meet the Committee's research intentions.

II

THE CRIMINAL JUSTICE SYSTEM IN METRO TORONTO: AN OVERVIEW OF OUR FINDINGS

For a victim of spousal abuse, the criminal justice system presents a complex cast of participants, for example -- police, justices of the peace, courts, crown attorneys, judges, etc. Although the players are closely connected, each has a mandate, role, informal and formal policies and procedures which influence and guide his response to spousal abuse.

Creation of a data base which captures the response of multiple players to spousal abuse is dependent on a clear understanding of the:

- points of entry to the system;
- progress of cases through the system from each point of entry;
- availability of records which document the sequence of events from point of entry to final disposition.

In this chapter, a brief outline of the points of entry, progress of cases, and the availability of pertinent documentation in Metro Toronto's criminal justice system is presented.

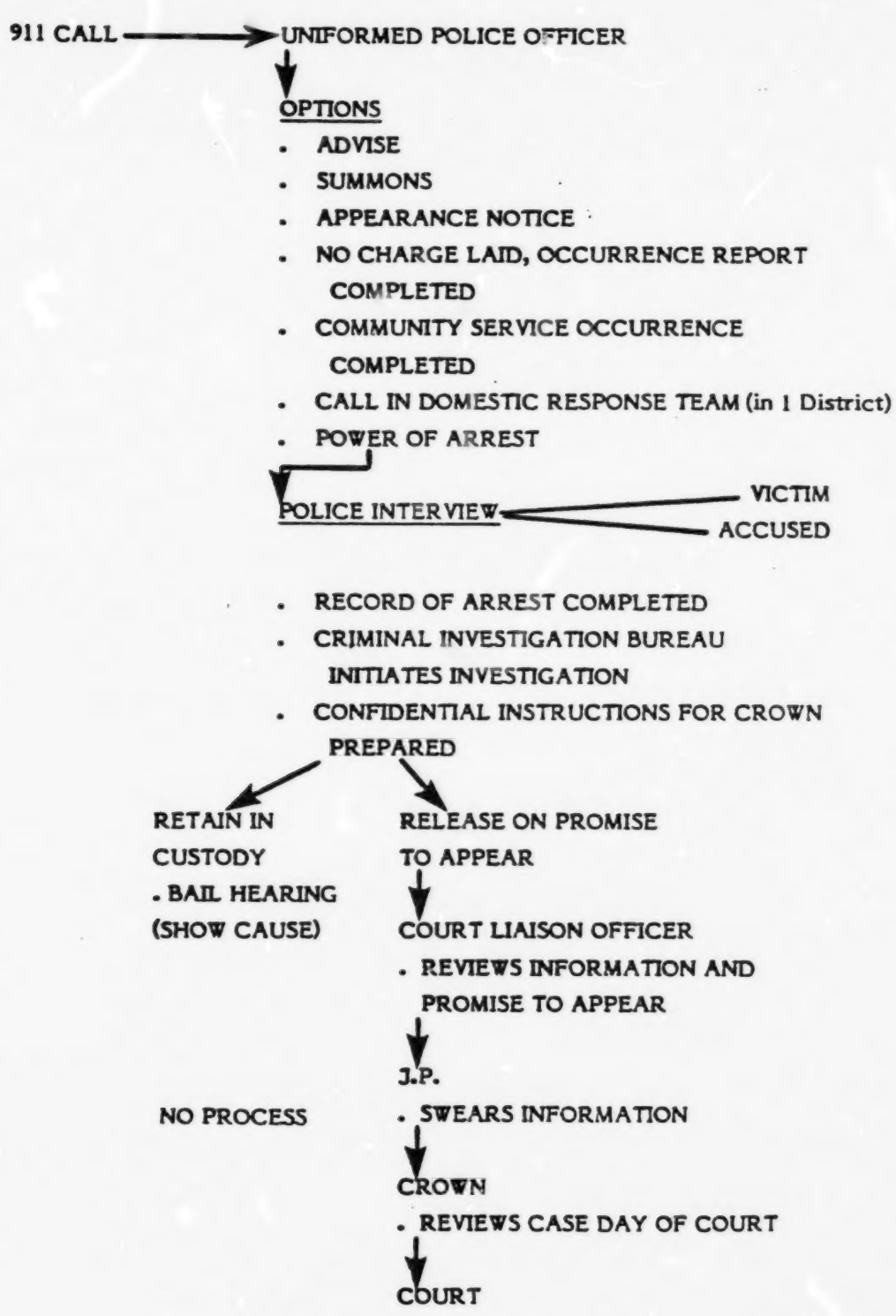
TWO MAJOR POINTS OF ENTRY -- POLICE AND COURTS

Our review suggests that victims of spousal abuse gain access to the criminal justice system from a wide range of points of entry, including "direct" entry points -- police, courts -- and "indirect" entry points -- transition houses, family counselling, medical referrals, and legal information services. In accordance with the Terms of Reference for Phase I, our attention is focused primarily on the direct points of entry -- police and courts.

The Criminal Code charges, laid by the police or by the private citizen, which lead victims of spousal abuse to the criminal justice system, are found in Appendix B.

EXHIBIT 1

POINT OF ENTRY — OFFICER AT THE SCENE



METROPOLITAN TORONTO POLICE FORCE -- A PRIMARY POINT OF CONTACT

911 or 967-2222 Contact

Victims in need of protection and assistance frequently contact the Metropolitan Toronto Police Force (MTPF). Contact is made by dialing the 911 emergency number or the general inquiry number -- 967-2222. Calls for assistance are recorded on tape and communications officers (complaint takers) complete a complaint form where details of the incident are summarized. If the complaint taker judges that the incident warrants the dispatch of a squad car, details of the complaint are passed onto the dispatcher. Alternatively, the complaint taker will refer the call to the appropriate agency. Dispatchers in the centralized communications office at MTPF headquarters relay emergency requests for assistance to police officers patrolling in the vicinity of the call.

The communications officers and dispatchers handle a large volume of calls, ranging from murder to lost property. To facilitate the transmittal of a "soup to nuts" range of requests, calls are categorized and prioritized. A discrete category for spousal abuse cases is not in place. As a result, a spousal assault may be characterized as an "assault", "dispute", "domestic", "pubic disturbance" or "fight". The communications officer does not have sufficient knowledge of the incident to know if it is a spousal abuse case.

Officer at the Scene

The police officer called upon to respond to the request for assistance is, in many cases, the first face-to-face point of contact between the victim and the criminal justice system.

Exhibit 1, facing, outlines the steps taken by the police officer in responding to the call.

Upon arrival at the point of conflict, the police officer has the option to advise, call in the domestic response team in one District, lay a charge, issue an appearance notice or summons, or arrest the accused. In deciding the appropriate course of action, the police officer is guided by Chief Ackroyd's December 8, 1982 routine order in which he advised that the Solicitor General of Ontario expects the police to investigate fully incidents of domestic violence and lay charges when warranted. This routine order reiterated the direction provided by the Attorney General of Ontario in an August 20, 1982 memorandum encouraging the police to lay the appropriate charges provided that the requisite, reasonable and probable grounds are present.

Should the power of arrest be the route followed by the police officer, the accused, and possibly the complainant, are interviewed at the police station. The accused may be retained in custody for a "show cause" hearing, where the police officer considers such action necessary to prevent a repetition or continuation of the offence. In a show cause hearing, the police officer asks the Crown Attorney to show cause why the accused should be either detained in custody or released on a recognizance, with or without sureties, to ensure his attendance in court and the preservation of peace.

Prior to the case proceeding to court, an Information, or formal allegation of charges, is sworn before a Justice of the Peace. It is the responsibility of the Justice of the Peace to decide whether or not to issue process. The issuance of process means that the Justice of the Peace is satisfied that grounds exist to warrant the laying of charges. In the event that process is issued, the case proceeds to court where the case is prosecuted. Police in 5 District and 14 Division have been instructed by the Deputy Crown Attorney to channel domestic violence cases through the criminal court.

DOCUMENTATION OF EVENTS -- METROPOLITAN TORONTO POLICE FORCE

911 or 967-2222 Phone Contact

Using current systems, it is not possible to distinguish calls involving spousal abuse. The volume of calls to the MTPF communications centre preclude communications officers from entering into a dialogue with the caller which results in reliable information about the nature of the assault.

Officer at the Scene

Police officers are expected to complete a community service occurrence report on every domestic dispute, as well as a general occurrence report if an offence has taken place. Our interviews suggest that police officers attend at an overwhelming number of domestic disputes, where a charge is not laid. However, community service occurrence reports are completed in only a small percentage of cases. Instead of "drowning in the paperwork" of community service occurrence reports, police officers resort to making brief notations of the call in their "black books". Consequently, our understanding of the number of domestic dispute calls attended where no charges are laid, is soft.

In situations where a charge is laid, the paper trail is well documented, and involves an extensive list of support staff. Although the paper passes through dozens of hands, we will attempt to simplify the process by referring to the major contact points.

- **Police Station**

  The Criminal Investigation Unit officer and/or the police officer at the scene, may initiate the following reports:

  - signed statement from the victim;
  - General Occurrence Report and Supplementaries where necessary;
  - Record of Arrest;
  - Information;
  - Promise to Appear;
  - Court Calendar (prepared by division staff).

  Copies of certain of these documents are distributed to:

  - Records Bureau, MTPF Headquarters;
  - Criminal Identification Bureau;
  - Confidential Instructions for the Crown Envelope (Dope Sheet);
  - Divisional Files;
  - Criminal Investigation Unit, Division.

- **Records Bureau**

  The Records Bureau maintains a centralized data bank of occurrences and offences investigated in Metro Toronto.

  Copies of all Occurrence reports and Record of Arrest reports are couriered to the Records Bureau three times daily at the end of each shift. Occurrence reports are time and date stamped by the Records Bureau and assigned an Occurrence Number.

  The Occurrence Processing Unit input descriptive information to a computer, including:

- charge;
- type of offence;
- date of offence;
- occurrence number;
- officer's badge number;
- division;
- identification of victim, accused, suspect.

A Coding Unit then uses a complex coding book to manually record details of the offence, for example:

- time of day of assault;
- weapon used — baseball bat, fist, ...;
- place of assault — alley, sidewalk, tavern, house, apartment...

The coders read thoroughly the synopsis of the charge before coding the occurrence details. A spousal abuse case is coded "822", which is a general category that includes all types of family disputes.

Manual codes are input to a Mohawk Series 21 computer using off-line diskettes. The information on the diskettes is transferred to tapes and subsequently to the Burroughs mainframe computer. Statistics are compiled using the computerized data on a weekly basis, and distributed to divisions.

- **Confidential Instructions for the Crown**

The police officer plays an important role in collecting evidence necessary for the Crown Attorney to successfully prosecute the assault charge. Confidential instructions for the crown are compiled in an envelope commonly referred to as the "dope sheet".

The contents of the dope sheet vary slightly depending on the decision to show cause or release. The crown's envelope may contain some or all of the following documentation:

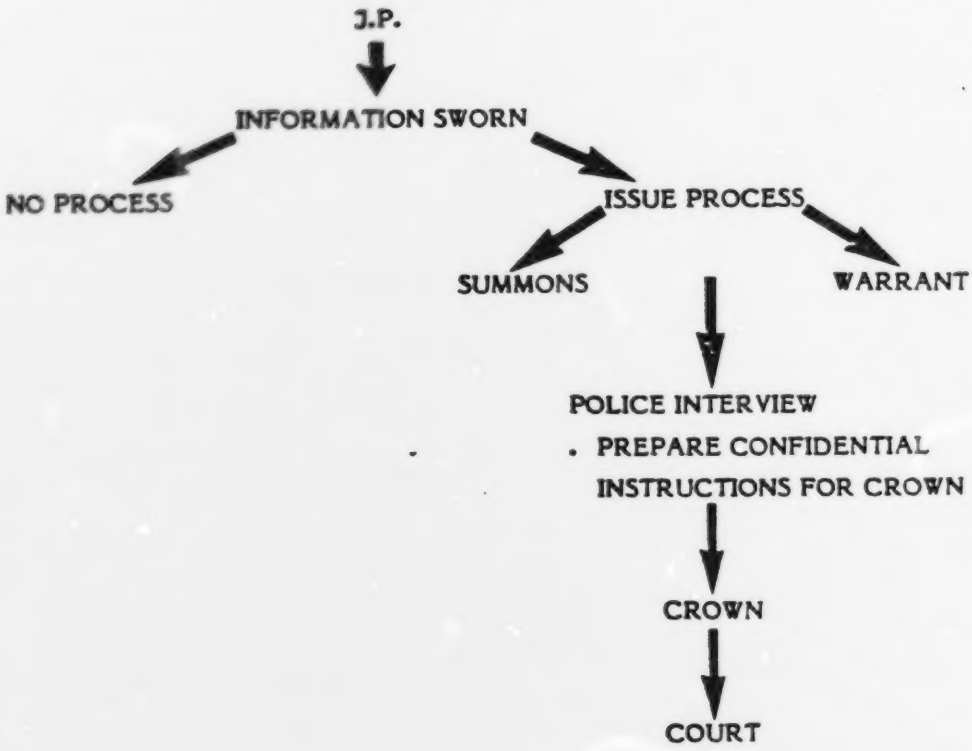
- Information to be sworn by a Justice of the Peace;
- copy of the Record of Arrest;
- two copies of the Supplementary Record of Arrest in which the synopsis or "story" is recorded;
- copy of the Promise to Appear notice.

EXHIBIT 2

POINT OF ENTRY —

JUSTICE OF THE PEACE, PROVINCIAL COURT,

CRIMINAL DIVISION



The dope sheet is forwarded to the MTPF Court Liaison Officer two or three days prior to the court date. The Court Liaison Officer ensures that the Information is presented to the Justice of the Peace to be sworn and is available to the crown attorney on the date of the court appearance. Details of the case's progress in court are recorded on the dope sheet by the Court Liaison Officer before returning the dope sheet to the appropriate division. The dope sheet is returned to the Court Liaison Officer prior to every court date.

JUSTICES OF THE PEACE — A PRIMARY CONTACT POINT FOR PRIVATE COMPLAINTS

Justices of the Peace, Provincial Court (Criminal Division and Family Division) are judicial officers, provincially appointed, who exercise powers derived from various pieces of federal and provincial legislation. Under the Criminal Code, Justices of the Peace are empowered to review charges sworn to by individuals, including police officers, alleging the commission of an offence. On the basis of the evidence before them, the Justice of the Peace decides whether there are sufficient grounds to "issue process". Once it is decided that the accused should be compelled to appear and answer to the charge, a summons or warrant is issued.

Provincial Court — Criminal Division

Exhibit 2, **facing**, outlines the steps taken by the Justice of the Peace in the Criminal Court in response to a private complaint.

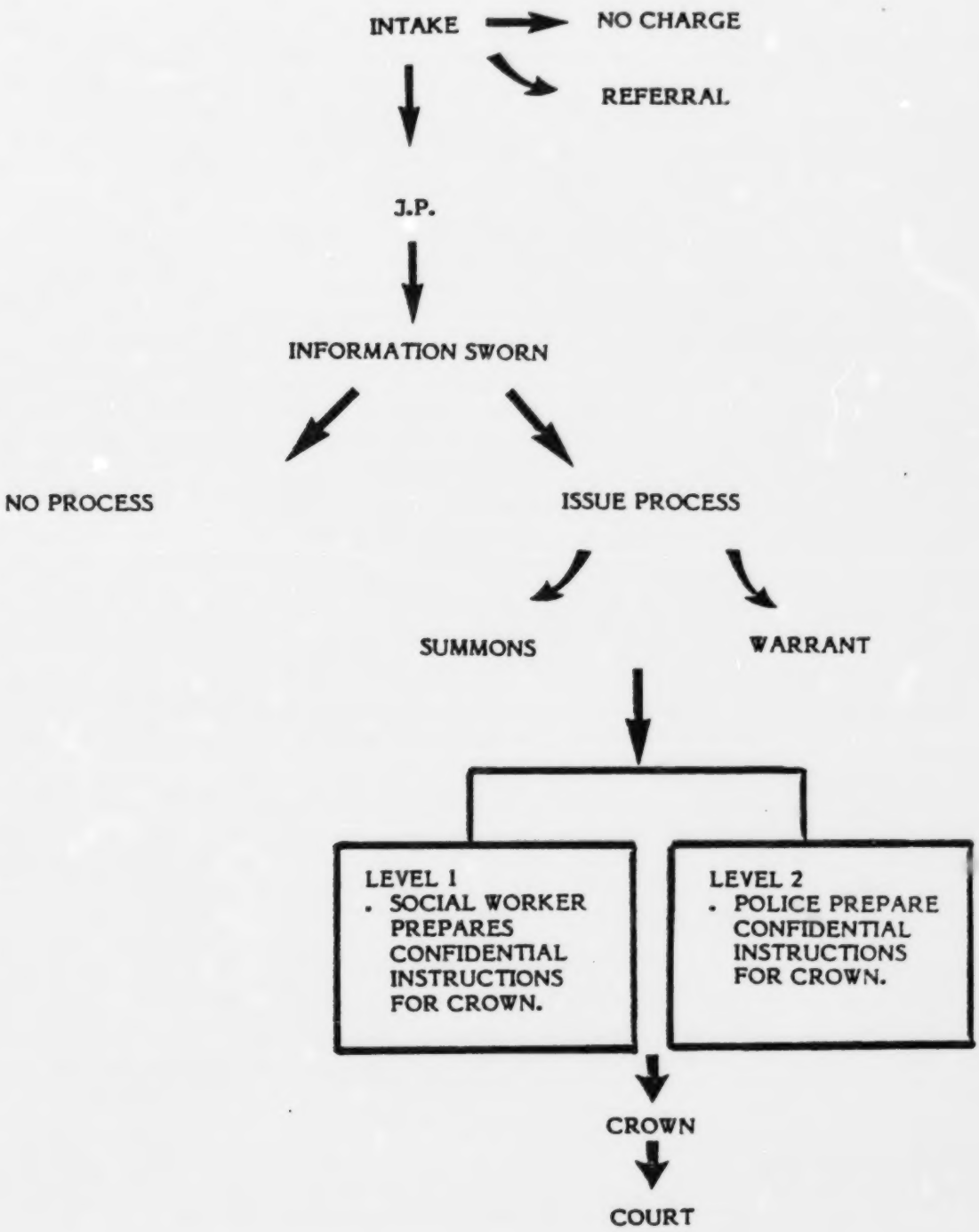
Provincial Court — Family Division

In the Family Division of the Provincial Court, the course of action cannot be as easily charted.

There is a temptation to rely on the Family Court at 311 Jarvis Street as the model for understanding how the family court deals with private complaints, since this court is the largest in Canada. Although our interviews were with staff of 311 Jarvis Street, we would point out to the Committee that this court is unusual, in that it provides clients with an intake service staffed by social workers and the full-time services of a Crown Attorney. Services provided to private complainants may vary in family courts where there is not a full-time crown attorney.

EXHIBIT 3

POINT OF ENTRY — PROVINCIAL COURT, FAMILY DIVISION



Notwithstanding our cautionary notes, we will outline the family court scenario on the basis of our understanding of 311 Jarvis Street. Exhibit 3, facing, outlines the sequence of events in the family court in a spousal abuse case.

All complainants reporting to the Family Court are interviewed by an intake social worker. The intake worker discusses the case with the complainant in an effort to ensure an understanding of the options available and the consequences of each option. We note, however, that in situations where the complainant and the accused are involved in a common-law relationship, the complainant is referred to a Justice of the Peace in the Criminal Court to lay a Criminal Code charge.

After discussion with the intake worker, the complainant decides whether or not to lay charges. If a decision is made to charge the accused, the case is presented to a Justice of the Peace where an Information is sworn and a decision is made by the Justice of the Peace whether or not to issue process. In the Family Courts, reference is made to Level 1 and Level 2 cases. Level 1 cases refer to charges known under the former Criminal Code as "common assault". Level 2 cases refer to charges known under the former Criminal Code as "assault causing bodily harm". Level 2 charges are not laid in family courts without an "in-house" Crown attorney. As a result, more serious offences are referred to a criminal court, or it is possible that a less serious, Level 1, charge is laid.

In a Level 1 case at 311 Jarvis Street, the social worker prepares the confidential instructions for the crown and the crown attorney prosecutes the case. In family courts served by part-time crown attorneys, it is possible that complainants are represented by counsel engaged at their own expense, or are unrepresented.

In a Level 2 case, the confidential instructions for the crown are prepared by the police. Level 2 cases are prosecuted by a Crown Attorney.

DOCUMENTATION OF EVENTS -- JUSTICES OF THE PEACE

Provincial Court -- Criminal Division

- A chronological record book is kept by the Justice of the Peace for his own reference.

- Informations are filed alphabetically by chronological court date. The filing system is a manual, process-oriented system, geared

towards ensuring that the appropriate Information is "brought forward" on the appropriate court date, in the appropriate courtroom.

- Once a case has been heard in court, the Information becomes a public document. On the reverse of the Information, a record of the case is kept, e.g. name of judge, crown attorney, clerk, court reporter, defense counsel, interim and ultimate disposition of case.

- An MTPF Court Liaison Officer serves in every criminal court in Metro Toronto, representing the police officer in the field until the case is set for trial.

- The Provincial Courts provide to the Court Liaison Officer a copy of the court calendar daily. The Court Liaison Officer matches his dope sheets for the day to the court calendar, and assists the crown attorney by suggesting possible court dates. Case dispositions are recorded by the Court Liaison Officer on the dope sheets before they are returned to the division.

- A Court Security Officer maintains an updated court docket of case dispositions, confirms the list with the Court Clerk during court recesses, and forwards the court docket to Records Bureau daily. This information is used by Records Bureau to update Canadian Police Information Centre (CPIC) records. The MTPF central record-keeping system is not geared toward matching occurrences with dispositions.

Provincial Court — Family Division

- Intake workers open social work files for incoming cases. If a case does not proceed to the stage where a charge is laid, e.g. a referral is made to an outside agency, a court file is not created.

- In the event that a charge is laid, a "Domestic" file is created by the scheduling unit. A "D" sticker is attached to the file folder, denoting a domestic case.

- A "Domestic" court docket is prepared by the scheduling unit. The docket includes the following information:

  - date charge laid;
  - names of defendant and complainant;
  - whether the case is new, or one which had been adjourned;
  - nature of the charge, e.g. assault;

- name of judge;
- court room number;
- duty counsel or counsel;
- name of crown attorney;
- names of court reporter and clerk.

- The court docket is a standard form used in all family courts, and is a public document.

- A court attendant records the disposition of the case on the court docket, and in the court file.

- Court files are filed according to bring forward date. The name of the defendant, or the next court date is required to locate a file.

SUMMARY

In this chapter we have outlined the:

- major points of entry to the system;

- progress of cases through the system from each point of entry;

- availability of records which document the sequence of events from point of entry to final disposition.

In summary, we have defined the Metropolitan Toronto Police Force and the Provincial Courts, Family Division and Criminal Division, as the major points of entry to the system by a victim of spousal abuse. The Officer at the scene, the intake worker at the Family Court, and the Justice of the Peace at the Criminal Court are often the first representatives of the criminal justice system with whom a victim has face-to-face contact. Records documenting the progress of a spousal abuse case from each of these points of contact have been developed to support the smooth operation of the police and court systems. Record-keeping systems have **not** been devised to specifically distinguish the progress of spousal abuse cases through the criminal justice system.

Accordingly, changes will be required in the existing systems to facilitate research on the criminal justice system's response to spousal abuse. In the next chapter, we define the issues which will have an impact on the creation of a research data base.

III

DEFINING DATA BASE PERFORMANCE REQUIREMENTS

A DECISION ON RESEARCH REQUIREMENTS IS KEY

Phase I of the Committee's work is directed towards developing the specifications of a data base which can be created by subsequent researchers in Phase II.

In many respects, the nature of the research activity planned for Phase II drives the process of shaping a data base. The Committee's research directions, methodology, and scope will create expectations of a data base. In defining the technical specifications of a data base, the aim is to find the best fit between research requirements and available data.

Our interviews and meetings with members of the Committee suggest that the Committee lacks clarity about the research protocol intended for Phase II. Before making any final decisions about proceeding with data base development in Phase II, we recommend that the Committee outline more precisely their expectations of the research.

In the absence of a comprehensive statement of information requirements, we have been guided by our terms of reference which suggest that the data base should be capable of:

- identifying representative samples of victims for interview purposes;
- identifying, if possible:
  - all interspousal dispute calls to the police
  - which of these involve violence or the threat of violence
  - the nature of the police response
  - and for those cases which proceed further into the legal system, the nature of these responses (eg., actions taken by the Justices of the Peace, Crowns, and dispositions from Criminal and Family Courts).

A DECISION ON CRITICAL POINTS AND TIMING EXPECTATIONS WILL IMPACT DATA BASE REQUIREMENTS

In clarifying research expectations, we suggest that attention be given to defining the critical points where information is required, as well as the immediacy with which information is required.

It is important that the critical points in the passage of a case through the system for research purposes be identified and agreed to by the Committee. The information available at these critical points should be assessed to determine the ease with which information can be provided.

And on the issue of timing, an understanding of the immediacy of information required is important. Timing expectations are of particular significance to the "tracking" component of the Committee's research. For example, is it satisfactory to interview victims about their contact with the criminal justice system at the point of initial contact with the system, as well as post court disposition, or is ongoing contact with the victim required as the case proceeds through the system? A data base developed to accommodate "front-end and back-end" information requirements is much simpler than one which connects a researcher with a victim, while the case is still before the courts.

A decision on these issues is necessary before a data base can be developed.

MAKING IT WORK WILL REQUIRE THE COMMITMENT AND COOPERATION OF THE PLAYERS

The criminal justice system is complex -- there is no argument about that! Even so, it is possible to track an individual through the system, given a great deal of perseverence and knowledge about where to look. There is no magical file stashed away somewhere which details everything you want to know about the criminal justice system's response to a spousal abuse charge. But it is possible, given enough information, to understand what has happened to a particular case.

Perhaps the closest we will come to finding an easy answer is the "dope sheet", or "Confidential Instructions for the Crown". The dope sheet provides a summary of the case as it moves from the police system to the court system -- all in one package. The emphasis of the dope sheet is on providing a snapshot of the case's progression through the system.

The dope sheet, as it currently exists, does not distinguish spousal abuse cases from other assault offences, and does not provide insight into the more qualitative aspects of the case. In addition, the dope sheet takes some time before it reaches the point of final disposition.

If the dope sheet route is not satisfactory, we move to a data base which is dependent on the commitment and cooperation of all the players at the key contact points. Before a final decision is made on the data base dimensions, it is critical that the individuals who will be called upon to change their operations for the Committee's purposes are supportive. A loose link in the chain of criminal justice players will jeopardize the usefulness of the information collected.

In the following chapter, we outline the process changes required by the players in the criminal justice system, to develop a data base which will give the Committee an understanding of the system's response to spousal abuse victims.

IV

ACTION RECOMMENDATIONS

Given our understanding of the Committee's research objectives and the information systems in place in the police and court systems, in this chapter we define the changes needed in the system to satisfy the requirements for research on the overall system's response to spousal abuse, and on the system's response to representative samples of victims.

PROCESS AND PROCEDURE CHANGES

The following actions would be required to develop a data base which addresses the research objectives:

- The police officer at the scene, or the Justice of the Peace in the Family or Criminal Court or the Intake Worker in the Family Court, be considered the initial point of contact considered critical for research purposes.

- The complainant be given a pamphlet describing her options, in situations where:

  - the police officer responds to a call, but does not lay a charge

  - the Justice of the Peace does not issue process

  - the private complainant does not lay a charge after discussion with a social worker

  (Sample pamphlet is found in Appendix C)

- The final page of the pamphlet would be a three-part form — Part 1 to be kept by the complainant, Part 2 to be kept by the police officer, Justice of the Peace, or intake worker, and Part 3 to be sent by the police officer, Justice of the Peace, or intake worker to the researcher. The form could be designed to elicit information about why a charge was not laid, etc. This form assists in tightening up our understanding of the volume of "domestics" which do not immediately result in a charge.

Exhibit 4

VICTIM INFORMATION CARD*

Occurrence # _____

You have complained of being assaulted/threatened by:

_____

POLICE ACTION

I will/will not lay a charge

I recommend no further action

I recommend that you lay a private information in the Provincial Court (Family Division)/(Criminal Division). To do so, telephone:

Family Division — 679-7090
Criminal Division — 679-7068

to obtain an appointment. You will be required to go to the Court House at 80 Dundas Street and relate the facts to a Justice of the Peace. When a charge is laid you will be required to appear in Court and give evidence.

The Crown Attorney will appear as your lawyer for the purpose of presenting evidence in Criminal charges.

Officer _____ Payroll # _____

* * * * * * * * *

F.Y.I.

If you need further assistance in resolving your difficulties you may call:
Family Consultants — 439-3291
or
Women's Community House — 439-4543

The staff there will be in a position to respond to your needs or refer you to someone who can.

ALSO

The Family Law Reform Act provides for a Court Order to be made for custody, access, support and to restrain your spouse from molesting, harrassing or annoying you. A lawyer will be of assistance in this process. If you cannot afford a lawyer, then contact:

Legal Aid, 121 Queens Ave. — 433-8179
and they will assist you.

NOTE

Conditions of an Order issued by the Court under the Family Law Reform Act cannot be enforced by the Police.

TAKE THIS CARD WITH YOU WHEN VISITING THE JUSTICE OF THE PEACE OR A LAWYER.

*Note: The above is duplicated from the London Police Force Victim Information Card and is reproduced here for information purposes only. The Committee should decide on appropriate content for the proposed 'Legal Options Pamphlet'.

A sample form is found in Exhibit 4, facing. This particular sample is the London Police Force's Victim Information Card which is distributed by the officer at the scene. We recommend that the name, address and phone number of the victim also be recorded in the event that researchers choose to interview women who did not proceed with charges. Further refinement of the form should be undertaken by the Committee and researchers in Phase II.

The form is intended to provide a quick and easy vehicle for determining the extent of interspousal conflict where the criminal justice system is involved, but no charges are laid. We cannot overemphasize the importance of a form, which will be considered acceptable and usable by the officer at the scene, the intake workers, and the Justice of the Peace.

The key is to keep the form short, simple and straightforward.

- In order to encourage police officers to participate in this program, we suggest that supervising officers, at shift change, request the number of pamphlets handed out. We understand that a similar checking-in system is used effectively during the Christmas RIDE program.

- Initiating documentation be revised to clearly flag cases of spousal abuse, including:

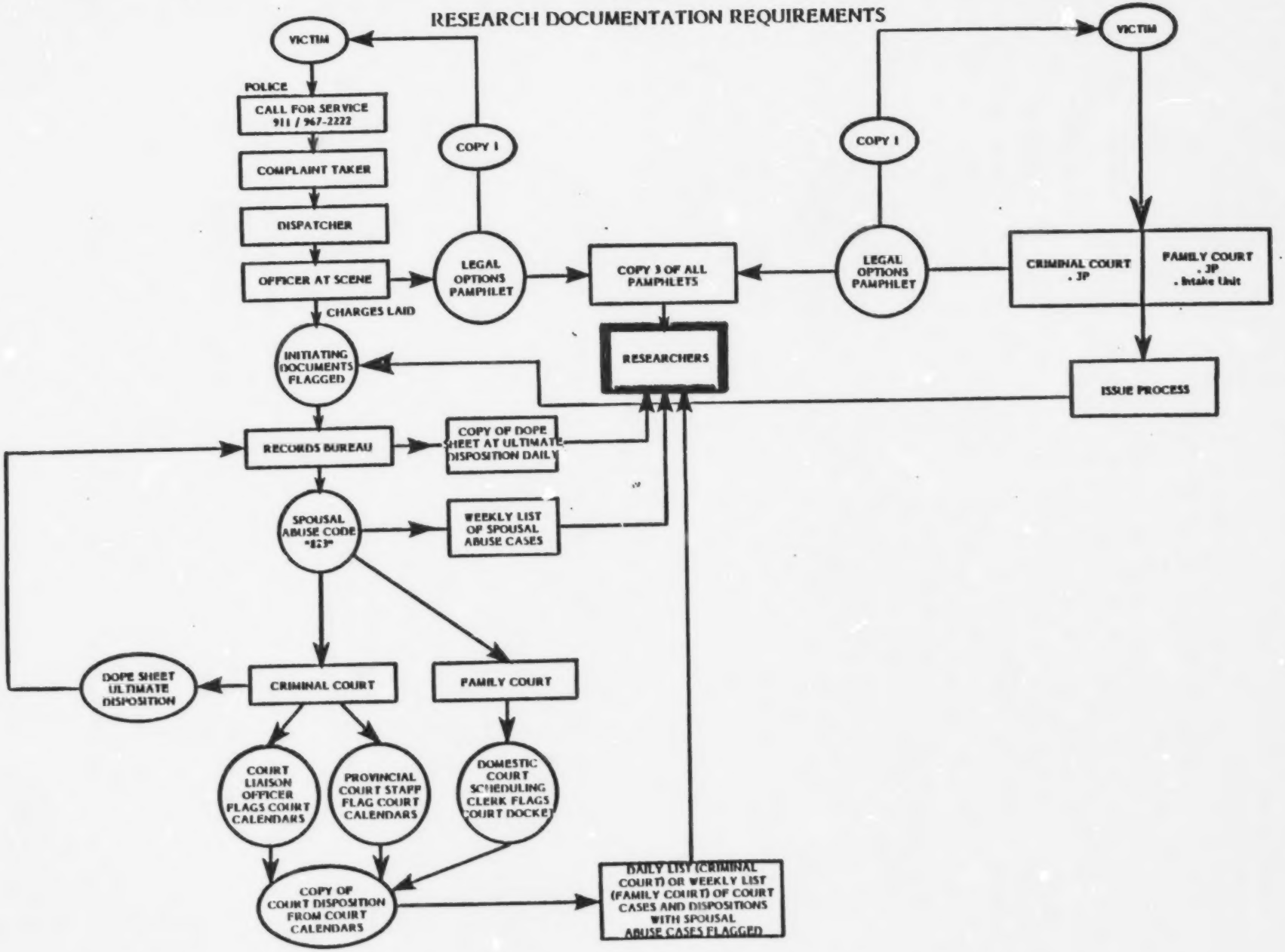
  - Occurrence Reports;
  - Notices of Arrest;
  - Confidential Instructions for the Crown;
  - Family court intake sheet used to prepare court file and court docket;
  - Court calendars.

- A "flagged" occurrence report or Notice of Arrest will point out to the Records Bureau that the occurrence is a spousal abuse.

- Records Bureau coding book be revised to differentiate spousal abuse occurrences (e.g. an "823" code for spousal abuse"). A computer run could provide the researchers with a weekly list of spousal abuse occurrences.

Exhibit 5

RESEARCH DOCUMENTATION REQUIREMENTS


VICTIM
POLICE
CALL FOR SERVICE 911 / 967-2222
COMPLAINT TAKER
DISPATCHER
OFFICER AT SCENE
CHARGES LAID
COPY 1
LEGAL OPTIONS PAMPHLET
COPY 3 OF ALL PAMPHLETS
VICTIM
COPY 1
LEGAL OPTIONS PAMPHLET
CRIMINAL COURT . JP
FAMILY COURT . JP . Intake Unit
RESEARCHERS
ISSUE PROCESS
INITIATING DOCUMENTS FLAGGED
RECORDS BUREAU
COPY OF DOPE SHEET AT ULTIMATE DISPOSITION DAILY
SPOUSAL ABUSE CODE "823"
WEEKLY LIST OF SPOUSAL ABUSE CASES
DOPE SHEET ULTIMATE DISPOSITION
CRIMINAL COURT
FAMILY COURT
COURT LIAISON OFFICER FLAGS COURT CALENDARS
PROVINCIAL COURT STAFF FLAG COURT CALENDARS
DOMESTIC COURT SCHEDULING CLERK FLAGS COURT DOCKET
COPY OF COURT DISPOSITION FROM COURT CALENDARS
DAILY LIST (CRIMINAL COURT) OR WEEKLY LIST (FAMILY COURT) OF COURT CASES AND DISPOSITIONS WITH SPOUSAL ABUSE CASES FLAGGED

Since the Records Bureau files are occurrences initiated at the courts and by the police, a reliable record of all spousal abuse charges in Metropolitan Toronto could be produced.

- Criminal Records Unit and the Records Bureau forward a copy of the dope sheet to the researchers once a final disposition is reached.

- The Criminal Records unit routinely compare the dispositions on the dope sheet to the judge's calendar and the court docket to ensure accuracy.

In addition to the reports produced at the initial point of contact with the police, should the Committee require access to information about court proceedings **before** the case is disposed of by the court, additional process changes would be required. These changes are outlined in Appendix D.

FEEDING INFORMATION TO RESEARCHERS

A summary of the process we envisage for feeding pertinent documentation to the Phase II researchers is presented in Exhibit 5, **facing**. The researchers will be forwarded:

- Pamphlet forms completed by the officer at the scene, Justice of the Peace, or social worker, giving the researcher an overview of the number of domestic situations for which charges were not laid immediately.

  A sample pamphlet and form is found in Appendix C.

- A weekly printout of spousal abuse cases, identifying victims where charges were laid, from the Records Bureau.

- Upon receipt by the Records Bureau of the Dope Sheet, after final disposition of the case, a copy of the Dope Sheet is forwarded to the researchers.

  A sample Dope Sheet is found in Appendix G.

DOCUMENTATION COMPLIES WITH INFORMATION REQUIREMENTS

The documentation forwarded to the researchers will provide a data base from which the information requirements outlined in the terms of reference can be met. Table I, **following**, presents a listing of the information requirements and the pertinent source document.

Table I

INFORMATION REQUIREMENTS BY SOURCE DOCUMENT

INFORMATION REQUIREMENT	SOURCE DOCUMENT
. Total telephone calls to police	. Available from Communications Bureau, MTPF
. Total dispatches by police, by type and division: - assault - dispute - domestic - fight - etc.	. Print-out available from Communications Bureau, MTPF
. All interspousal dispute calls to the police.	. Pamphlet "form" provides information about interspousal dispute calls attended by a police officer where no charges are laid. . Records Bureau list of "823"s provides information about interspousal dispute calls where charges are laid.
. Which of these involve violence or threat of violence	. Not possible to obtain information about calls involving violence or threat of violence where police decide not to lay charges. . Assuming police lay charges where there is violence or threat of violence, information can be obtained from Recordd Bureau's list of "823"s.
. Nature of Police Response	. Records Bureau list of "823"s will provide information about the nature of the charge laid. . Occurrence reports could be reviewed on individual cases.
. Actions taken by Justices of the Peace	. Pamphlet "form" provides information about interspousal dispute situations where the Justice of the Peace does not issue process. . Records Bureau list of "823"s provides information about interspousal dispute calls where process is issued by the Justice of the Peace.
. Actions taken by the Crown	. Limited information available from the dope sheet.
. Family and Criminal Court dispositions	. Dope Sheet details court dispositions.
. Representative sample of victims	. Pamphlet forms . List of "823"s

We point out the difficulty in obtaining information about situations where violence was alleged to have occurred, but where the police have not laid charges or the justice of the peace has not issued process. We cannot expect officers or justices of the peace to indicate on a pamphlet form that violence has occurred, but in their judgement there were insufficient grounds to lay a charge. As a result, we can only assume that the directives issued by Chief Ackroyd and the Attorney General have been operationalized, resulting in charges being laid in situations where violence has occurred.

Building a data base which will provide researchers with the needed information requires the cooperation of a number of participants in the criminal justice system. Consideration was given to involving more individuals at each point; for example, requesting the Court Liaison Officer or the Crown Attorney to complete a form to supplement the information recorded on the dope sheet. Our discussions and observations, however, led us to the conclusion that such requirements would strain an already tight system and jeopardize the data collection process.

TECHNICAL REQUIREMENTS

The researchers engaged in Phase II will require analytical tools to support their research activities. The following outlines the technical requirements of the researchers to handle the research data:

- Hardware:
  - a micro computer;
  - disk storage;
  - a video display unit;
  - dot matrix printer;
  - a modem.
- Software:
  - an operating system;
  - a basic language;
  - word processing;

- data base management system;
- statistical package;
- a report generator;
- communications software.

In addition to the above requirements, it is desirable to have a system that is compatible with other technical equipment in the Solicitor General's office.

There are a number of suppliers of both hardware and software in the industry that are quite capable of meeting the above requirements. However, with the final requirement of having the system relatively compatible with the equipment in the Solicitor General's Office, the supplier that can do this most effectively is Digital Equipment of Canada (DEC). The Solicitor General is currently using a DEC VAX-750 and has recently acquired some Professional 350 micro computers that act as both standalone systems, as well as terminals to the mainframe. The DEC micro computer is technically equal or superior to the industry standards and is price competitive. We, therefore, recommend that the most appropriate configuration of hardware and software to meet the researchers' needs consists of the following equipment, primarily supplied by DEC:

- Hardware:
  - DEC P-350;
  - a 13 inch colour RGB monitor;
  - an extended bit map module;
  - colour monitor cable;
  - a modem;
  - a modem cable;
  - a 10 megabyte hard disk;
  - 100 CPS dot matrix printer;
  - printer cable.

- Software:
  - a P/OS operating system;
  - Pro/communications package;
  - Pro/basic language;
  - a starter kit:
    - spread sheet
    - graphics
    - data base manager;
  - datatrieve (II);
  - S.P.S.S. (Statistical Package for the Social Sciences);
  - Pro's editor;
  - LEX II word processing.

We are suggesting that a 10 Megabyte hard disk storage system is an appropriate configuration for this project. It would be ideal to have a tape-streaming backup available for this system, as well as a floppy disk drive. However, a compatible tape-streaming backup system may be difficult to acquire for this particular configuration and the researchers may have to rely on floppy disks for backup. Nevertheless, we still recommend that a 10 Megabyte hard disk be used for the research, as it is much more efficient in terms of screen response time, which will be required for on-line data entry during a question and answer session with a spousal abuse victim. Additionally, it enables the researchers to make much more efficient use of their time, because of the significantly improved response time associated with a hard disc drive.

The estimated cost for the above configuration of hardware and software is in the $15,000 range. Some additional upfront costs may be required to acquire some specialized custom software for creating data entry screens. However, it is anticipated that this one-time cost would be relatively small, i.e. $2-3,000.

SUMMARY

In this chapter we have outlined the specific procedure and process changes that will be required to supply the data base for the research phase of this project. Additionally, we have identified the application software and hardware that is appropriate for the creation of the data base, as well as the ongoing research requirements.

In summary, the collection of research information is dependent on the successful achievement of the following changes to existing processes:

- Flagging of initiating documentation:
  - occurrence reports
  - notices of arrest
  - Dope Sheet
  - Family court intake sheet used to prepare court file and court docket
  - court calendars.
- Cooperation in distributing pamphlets, completing forms and forwarding copy 3 to the researchers.
- Records Bureau Coding Book — "823".
- Forwarding a weekly computer listing of "823"s to the researchers.
- Forwarding copy of dope sheet by Records Bureau to the researchers.

Before proceeding with the Phase II research, the Committee should make a decision and gain the commitment from necessary input agencies for the required system and procedural changes. The specific areas requiring commitment, along with the committing agencies, are listed below:

1.	Funding	Solicitor General
2.	Abuse Pamphlet	This Committee MTPF Justices of the Peace Social Work Staff, Family Court

3.	Document Changes . Occurrence Report . Appearance Notice . Notice of Arrest . Court Calendar . Intake Sheet, Family Court	MTPF
4.	Coding Changes (i.e. "823") and forwarding weekly reports	Records Bureau, MTPF Systems Department, MTPF
5.	Attending Police Officer	MTPF
6.	Photocopying and Forwarding Daily Dockets	Court Clerks
7.	Photocopying & Forwarding Completed Dope Sheets	Records Bureau, MTPF
8.	Flagging Daily Dockets	Scheduling Clerk, Family Court Court Liaison Officer Provincial Court Office

Without the approval and commitment of the above agencies, the second phase of the research is doomed to failure.

V

CONCLUSIONS

The complexity of the Metro Toronto Criminal Justice System presents a major obstacle to developing a system-wide data base.

The criminal justice system is a conglomerate of "well-oiled machines" which appear to serve their users' operational needs well — the Records Bureau, the Court Liaison Officers, the Court "bring forward" filing system. The emphasis, however, is on meeting operational needs. Building a data base which ties together information systems which function for distinct operational purposes is not easy.

The Committee will need to be exceedingly clear about the kind of information considered necessary, the timing considered necessary, and the players from whom first-hand information is required. In deciding these issues, we would suggest to the Committee that a balance be struck between the hard facts and victim interviews.

We are confident that with commitment from all involved agencies, a data base can be developed which will allow researchers to contact victims of spousal abuse as the case proceeds from the point of laying a charge to sentencing. We are confident that a data base can be developed which will give the Committee a statistical context for the required research. We cannot, however, close without respectfully suggesting to the Committee that your collective wisdom and knowledge of how the system really works -- its strengths and its weaknesses — is the most useful research resource. In our discussions with you and your colleagues in the system, we have been impressed by your understanding of the system's weak links and requirements for change. We encourage you to gauge your research efforts according to what you really need to know to support the changes which will improve the responsiveness of the criminal justice system to spousal abuse.

APPENDIX A

*

INTERVIEW SCHEDULE

Interviews were conducted with officials from the following organizations during the course of this project:

Metro Toronto Justice Advisory Committee on Spousal Violence.

Provincial Court, Family Division

Provincial Court, Criminal Division

Law Reform Commission

Community Services Division, MTPF

Data Processing, MTPF

Research, MTPF

Communications Centre, MTPF

Operational Planning, MTPF

13 Division, Criminal Investigation Bureau, MTPF

Domestic Response Team, MTPF

Records Bureau, MTPF

Crown Attorney's Office

Family Service Association

Metro Toronto Coordinating Committee Against Wife Assault

Women in Transition

Information and Computer Systems Branch, Attorney General

Family Court

Lawyers

Family Law, Supreme Court of Ontario

- COMMITTEE MEMBERS:

Chief Judge Andrews	Provincial Court, Family Division
Judge Walmsley	Provincial Court, Family Division
Chief Judge Hayes	Provincial Court, Criminal Division
Ms. Anne Cools	Women in Transition
Dr. D. Mendes Da Costa	Law Reform Commission
Staff Sgt. Ron McKnight	Community Services Division, MTPF
Mr. Victor Paisley	Lawyer
Ms. Judith Ryan	Lawyer
Mr. D.M. White	J.P. (Criminal Court)
Mrs. Joan Kelly	J.P. (Family Court) Supervisor, Court Counselling Services
Mrs. Anne Wood	Metro Toronto Coordinating Committee Against Wife Assault
Mr. J. Wiley	Deputy Crown Attorney
Mr. Bob Couchman	Family Service Association

- NON-COMMITTEE MEMBERS:

Mr. David Thornton	Information and Computer Systems Branch, Attorney General
Dr. Leah Lambert	Research, MTPF
Communications Centre	MTPF
Mr. Bob Spafford	Data Processing MTPF
Mr. Neill Kennedy	Data Procesing, MTPF
Ms. Kris Kijewski	Operational Planning, MTPF
Sgt. Steve Urban	13 Division, Criminal Investigation Bureau
P.C. John Schmidt	13 Division, Criminal Investigation Bureau
Ms. Doreen Walker	Domestic Response Team
Mr. Leo Coelho	Records Bureau, MTPF
St. Inspec. McGowan	MTPF, Old City Hall
Mr. L.F. Chettleborough	Family Court
Ms. Barb Ferns	Crown Attorney
Ms. Geraldine Waldman	Lawyer
Professor Constance Backhouse	Faculty of Law, University of Western Ontario
Mr. Karl Naumoff	Coordinator; Family Law Supreme Court of Ontario

APPENDIX B

*

CRIMINAL CODE CHARGES

Hicking-Johnston

ASSAULT.

245. Every one who commits an assault is guilty of

***(a)* an indictable offence and is liable to imprisonment for five years; or**

***(b)* an offence punishable on summary conviction. 1953-54, c. 51, s. 231; 1972, c. 13, s. 21; 1974-75-76, c. 93, s. 22; 1980-81-82, c. 125, s. 19.**

The following case was decided under the former s. 245 but would still appear relevant under this section.

In an unusual situation the accused swung his fist in a blow towards one P. and instead hit a glass ornament, from which a shattered piece injured P's wife. It was held, reversing his acquittal, that the accused's general intent under s.244 (*a*) to apply force, while misdirected, still made him liable for the deemed transfer of the assault upon Mrs. P.: *R. v. DEAKIN* (1974), 16 C.C.C. (2d) 1, [1974] 3 W.W.R.435 (Man. C.A.).

ASSAULT WITH A WEAPON OR CAUSING BODILY HARM—Definition of "bodily harm".

245.1 (1) Every one who, in committing an assault,

***(a)* carries, uses or threatens to use a weapon or an imitation thereof, or**

***(b)* causes bodily harm to the complainant,**

is guilty of an indictable offence and is liable to imprisonment for ten years.

(2) For the purposes of this section and sections 245.3 and 246.2, "bodily harm" means any hurt or injury to the complainant that interferes with his or her health or comfort and that is more than merely transient or trifling in nature. 1980-81-82, c. 125, s. 19.

AGGRAVATED ASSAULT—Punishment.

245.2 (1) Every one commits an aggravated assault who wounds, maims, disfigures or endangers the life of the complainant.

(2) Every one who commits an aggravated assault is guilty of an indictable offence and is liable to imprisonment for fourteen years. 1980-81-82, c. 125, s. 19.

UNLAWFULLY CAUSING BODILY HARM.

245.3 Every one who unlawfully causes bodily harm to any person is guilty of an indictable offence and is liable to imprisonment for ten years. 1980-81-82, c. 125, s. 19.

WHERE INJURY OR DAMAGE FEARED—Duty of Justice—Adjudication—Forms—Procedure.

745. (1) Any person who fears that another person will cause personal injury to him or his spouse or child or will damage his property may lay an information before a justice.

(2) A justice who receives an information under subsection (1) shall cause the parties to appear before him or before a summary conviction court having jurisdiction in the same territorial division.

(3) The justice or the summary conviction court before which the parties appear may, if satisfied by the evidence adduced that the informant has reasonable grounds for his fears,

***(a)* order that the defendant enter into a recognizance, with or without sureties, to keep the peace and be of good behaviour for any period that does not exceed twelve months, and comply with such other reasonable conditions prescribed in the recognizance as the court considers desirable for securing the good conduct of the defendant, or**

***(b)* commit the defendant to prison for a term not exceeding twelve months if he fails or refuses to enter into the recognizance.**

(4) A recognizance and committal to prison in default of recognizance under subsection (3) may be in Forms 28 and 20 respectively.

(5) The provisions of this Part apply *mutatis mutandis*, to proceedings under this section. 1953-54, c. 51, s. 717; 1974-75-76, c. 93, s. 88; 1980-81-82, c. 125, s. 28.

Subsec. (1). The provisions respecting the sufficiency of informations apply to an information under this section: *R. v. BOYKO* (1978), 43 C.C.C. (2d) 408 (Ont. Prov. Ct.).

Subsec. (3). In addition to the authority of subsec. (3) (*a*) a magistrate has common law jurisdiction on facts established to his satisfaction to bind anyone over to keep the peace: *R. v. WHITE, ex. p. CHOHAN*, [1969] 1 C.C.C.19, 5 C.R.N.S.30 *sub nom. R. v. CHOHAN* (B.C.S.C.).

Along with his common law jurisdiction the judge must have before him sufficient evidence and he must first accord any person who might be affected by such jurisdiction an opportunity to be fully heard: *Re REGINA and SHABEN et al.* (1972), 8 C.C.C. (2d) 422, 19 C.R.N.S.35 *sub nom. Re SHABEN, FERRAR and TALBOT* (Ont.H.C.J.).

The magistrate's common law jurisdiction to dispense "preventative justice" must not be exercised arbitrarily or unfairly and without giving the person bound over notice and an opportunity to be heard. It is a denial of natural justice resulting in a loss of jurisdiction to make an order against the petitioner on an application under this section when she has been given no notice that she, as well as the defendant, would be bound over: *Re COMPTON and THE QUEEN* (1978), 42 C.C.C. (2d) 163, 3 C.R. (3d) S-7 (B.C.S.C.).

BREACH OF RECOGNIZANCE.

746. A person bound by recognizance under section 745 who commits a breach of the recognizance is guilty of an offence punishable on summary conviction. 1953-54, c. 51, s. 718.

APPENDIX C

*

PAMPHLET

You May Decide to Leave Your Partner Permanently

You should see a lawyer about this. Support payments and child custody are things about which you may need legal advice. If you want a divorce, you should get a lawyer too.

But I Can't Afford a Lawyer!

If you can't afford a lawyer, there are two ways to get legal help:

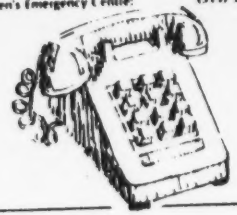
1. You can apply for a Legal Aid Certificate. If granted, it will pay all or part of your legal fees. Look under Legal Aid in the white pages of your telephone book for the office nearest you.
2. You can call or drop in at a Legal Aid Clinic in your area. To find out if there is a clinic near you, call the Lawyer Referral Service. In the Toronto area, the number is 947-3300. If you are outside of the Toronto area, you can call the Service toll free at 1-800-268-8326. (In Thunder Bay, Rainy River, Kenora and Fort Francis, call Zenith 5-8600.)

You are not alone. Getting help can be frightening and confusing, and take a long time. But, it is better than being afraid and hurt. You owe it to yourself and your children to do something. You deserve to be safe.

Here are the names and telephone numbers of some free help groups for women. They can help you find a place to stay, get counselling, and give you a lot of moral support.

Free Temporary Help — Hostels

Cambridge	
— Family Crisis Centre:	(519) 621-6810
Carleton Place	
— Interval House:	(613) 257-5960
Egansville	
— Anna's House:	(613) 628-2354
Guelph	
— Women in Crisis:	(519) 836-1110
Hamilton	
— Inasmuch House:	(416) 529-8149
Kenora	
— Women's Crisis Centre:	(807) 468-4211
Kingston	
— Interval House:	(613) 546-1777
Kitchener	
— Anselma House:	(519) 742-5894
London	
— Family Group:	(519) 673-0781
— Women's Community Group:	(519) 439-4543
Ottawa	
— Interval House of Ottawa-Carleton:	(613) 234-5181
Pembroke	
— Mid-ann House:	(613) 732-1111
Sarnia	
— Women's Interval House:	(519) 336-5200
St. Catharines	
— Women's Place:	(416) 684-8111
St. Thomas	
— Y.W.C.A. Emergency Housing:	(519) 631-9800
Sault Ste. Marie	
— Women In Crisis:	(705) 256-7101/256-8249
Thunder Bay	
— Native Women's Crisis House:	(807) 622-5101
Toronto	
— Interval House:	(416) 924-1491
— Nellie's	(416) 461-1084
— Women's Habitat	(416) 252-5829
— Women In Transition, Inc.:	(416) 967-5227
Windsor	
— Hiatus House:	(519) 253-4458
Woodstock	
— Women's Emergency Centre:	(519) 539-1439



IMPORTANT: PLEASE READ

This material contains general information about one area of the law. It is designed to help you recognize when the law can assist you with a problem. It does not provide a complete statement of the law in the area. **If you have a legal problem, you need legal advice** which this pamphlet cannot provide. To get legal advice, contact a lawyer or a Legal Aid Clinic in your community.

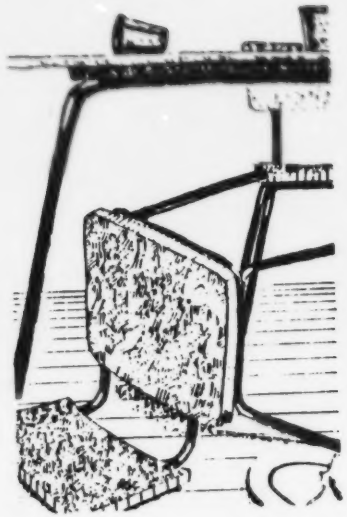
This pamphlet written and produced by:

Community Legal Education Ontario (CLEO)
62 Noble Street,
Toronto, Ontario
M6K 2C9

with funding from the Ontario Legal Aid Plan, Clinic Funding Committee.

Distributed by:

ASSAULT IN YOUR HOME



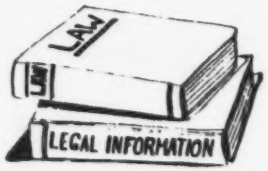
cleo

Nobody Should be Hitting You

It is, unfortunately, very common for a woman to be assaulted in her home. The attacker may be her spouse, her son, or any other man she lives with. In this pamphlet, we speak of "your partner" only because most assaults are done by a husband or a common-law spouse. No matter who hits you, the law is the same. You have a right to stop the violence.

What Can I Do?

Call the police. If you call the police because you've been attacked, it does not necessarily mean your home life is finished. If you call the police, your partner may come to understand that you will not stand for his violent behaviour, and that he has no right to assault you. Even if no charges are laid, it may make your partner think twice. Call the police yourself. Do not wait for a neighbour to hear you screaming. On the phone, give your name and address. Tell the police it is an **emergency**, and that you are being attacked. When the police arrive, tell them everything that has happened. If you have any bruises or wounds, show them to the police and ask that they take note of them. You can ask that they be photographed for evidence in court. If there are witnesses, give their names to the police. **Find out the names or badge numbers of the police.** This is important information if you take the case to court.



If it looks like the police are not going to take your partner to the police station, and you fear being left alone with him, **don't stay.** Your peace of mind and safety come first. You can ask the police to stay long enough to let you pack a suitcase, take the kids, and go to a hostel or a friend's home. The police may be willing to drive you there. You should ask them to do so. **This is not desertion.**

Charges May Be Laid

The police should lay charges against your partner for hurting you. If the police will not lay charges, you can do so yourself. You can lay a charge against your partner for hurting you by going to a justice of the peace. Ask the police where to go to do this. If you lay a charge, your partner must go to court. If you are going to lay a charge, you should do so soon after the attack. It does not cost anything to do this. You do not need a

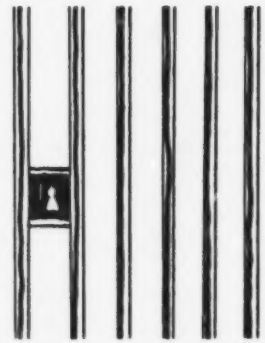
lawyer, but you might want one for advice or moral support. Also, a lawyer can help you to convince the justice of the peace, and later the judge, that you are very serious about laying a charge. Many family lawyers think that laying a criminal charge is the best action to take. (If you lay a charge, the police take the situation more seriously. They are then more willing to protect you.)

You Can Get a Peace Bond

You do not have to prove an attack has occurred to get a peace bond. You only have to show that it is likely to occur. Threats from your partner show this. You must go to a justice of the peace and explain your situation to him or her. The justice of the peace can issue a peace bond. A peace bond is a legal promise that your partner signs. It is a promise by your partner that he will behave well and not break the peace for 12 months. If he threatens or assaults you, he can be charged with breaking the bond and hurting you. If he breaks the bond, you must report it to the police. If you do not, nothing will happen.

You Can Get a Restraining Order

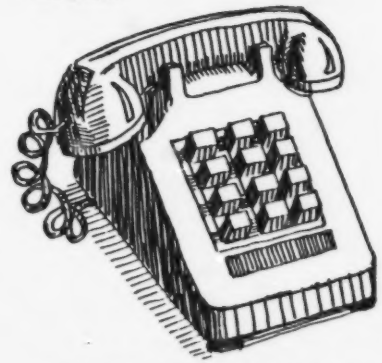
A restraining order is like a peace bond. The differences are that to get a restraining order you must have been attacked, and you must be separated from, or divorcing, your spouse. A restraining order is a court order that forbids your partner to hurt or threaten you. If your partner breaks the order, he can be fined up to $1000, or jailed for 90 days. As you must go to court to get this order, you should get a lawyer to help you.



But I Don't Want to Lay Criminal Charges!

If you do not want charges to be laid against your partner, another thing you can do is to talk to your family doctor. The doctor may speak to your partner about his violent behaviour. Also, he or she may help you to find counselling. Remember, that counselling will work only if your partner agrees that there is a serious problem and wants to do something about it.

There are many women's help groups in the province. They may be your best moral support and help. Call your community centre or information office to find out about local groups.



You could also leave home for a short time and stay with friends, family, or at a hostel. If you decide to leave home, pack a suitcase with clothes, necessities, money, bankbook, keys, identification, and any charge cards. This will allow you to stay away from home for a few days if you feel the need. If you leave the house with a suitcase, it may shock your partner enough to make him think about what he has been doing. It will also show him that you can take care of yourself. Take only your things and those of your children.

London Battered Women's Advocacy Clinic
399 Ridout Street North
London, Ontario, N6A 2P4

LONDON BATTERED WOMEN'S

LEGAL HANDBOOK

ACKNOWLEDGMENTS

The following persons were responsible for the writing of this Handbook:

CONSTANCE BACKHOUSE, LAUREL HALL, CAROLYN HILL, KISKY LAIZNER, MARILYN MACDONALD, CAROL MONTGOMERY, ANNE PENNEY, GERRY POYNTER, GINA SCARCELLA, LORNA SCHOENROTH, DEBBIE SHENNETTE, JUDY SHRIAR, EVELYN VALLICK.

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APPENDIX A

INTRODUCTION

This Handbook was the result of a research project run by the "Women and the Law" class of the Faculty of Law at the University of Western Ontario, London, Ontario, in the spring of 1980.

To gather the information you will find here, we interviewed police officers, Crown Attorneys, judges, justices of the peace, family lawyers, Legal Aid, welfare workers, and battered women. Almost every battered women's shelter in Ontario was contacted.

The results of the research showed that the laws are supposed to be uniform across Canada and across the province on various matters. However, when it comes to battered women, the laws are applied differently depending on which jurisdiction you reside in. By necessity, then, this is a *London* Battered Women's Handbook. When we describe the action the police will take, the procedure of the courts, etc., we are describing what happens in the City of London, Ontario and surrounding area.

We hope that this Handbook will be of use to women in London. For women outside London who read it, we hope it will serve as a model upon which to conduct local research in your jurisdiction. We hope you will be able to write other Handbooks based on your local situation.

THE HANDBOOK: IS IT FOR YOU? WHAT WILL IT TELL YOU?

If you live with a man who has hit you or is in the habit of using physical force against you, then this Handbook is for you.

There are many women in your situation who are physically abused regularly and they come from all walks of life. The Advisory Council on the Status of Women estimates that one out of every ten Canadian women who are living with a man has been assaulted by him. Many women report that the violence has taken on a 3-phase cycle. First there is the tension-building phase. Then it blows up into a physical assault. Finally, in the third phase their partner becomes kind, loving, and remorseful. Many women tend to forgive their partners during this last phase, only to discover that the cycle begins once more.

No matter who you are, you should know how you can help yourself and your partner and your family. You owe it to yourself to stop the violence. Nobody should be hitting you. As a human being, you're worth more. Your partner must be forced to begin taking responsibility for what he is doing to you. One way you can help him realize what he's doing and help him to take responsibility for his actions is to read this Handbook.

This Handbook has been put together in an effort to inform you of your legal rights. It tells you how to take advantage of them and what to expect when you do. It has been divided into three sections:

1) What to do immediately – Call the police? Leave? Where to?

2) What the criminal justice system is all about – Do you lay a charge? How? What will happen?

3) What the family law has to offer – Separation? Divorce? Support? Custody?

There are a lot of people in London who will help you if you want to help yourself.

Remember, if you take advantage of the legal system it doesn't mean that your family life is finished. It may only mean that you've let your partner know that you don't want to be struck anymore. This may be a very positive step in reconstructing your family life. It will help your partner take responsibility for his actions. It shows that you can stand up for your rights and yourself!

I. WHAT TO DO IMMEDIATELY

A. THE POLICE

Should you call the police?

No one, not even your partner, has the legal right to assault you. You have the right as a citizen to be protected from assault or violence in your home as much as on the street.

Do not wait or hope that a neighbour will hear your screams and call the police for you.

Even if the police do not remove your partner from the home, their presence will stop the violence and sometimes is enough to make your partner realize that his behavior is wrong and unacceptable in our society.

The decision to call the police is, of course, yours to make, but as long as you do call, aid is at hand.

How do you call the police?

Dial 911. A police dispatcher will answer the phone. Give your name and address. Tell the dispatcher clearly and in as few words as possible that you are being beaten.

The dispatcher decides how dangerous the situation is, based on how you sound over the phone and what you tell him/her. Be sure to tell the dispatcher if you think your life is in danger. It may make a difference in how long it takes for the police to reach you.

Remember, once the police dispatcher answers the phone, your number can no longer be disconnected. Even if your partner rips the phone cord from the wall, the police will still be able to trace your call and come to your assistance.

How long will it take the police to arrive?

The police take two to five minutes to answer a call once they are contacted by the police dispatcher. But, on a busy night, the dispatcher may have to hold the call for as long as 30 minutes. Sometimes, if the police have been called to your home several times before, it may take even longer for the police to arrive. You must tell the dispatcher if you think your life is in danger because then your call will get priority and every effort will be made to come to your assistance as quickly as possible.

The police arrive – What is their role?

In almost all cases of domestic violence, two police officers will answer your call. They see themselves as "keepers of the peace" and will not take sides. Their first priority is to assess the gravity of the situation. They do this by taking you and your partner aside separately to ask each of you what happened.

How should you react?

The police do not know what has happened. It is best to tell them exactly what has happened, from beginning to end. Show the police any visible marks of violence on your person, any torn clothing, any damaged furniture. Tell them if your partner has assaulted you before and whether you think he will continue once they leave. Give the names of anyone who saw the beating. They are potential witnesses.

Your reaction to the police is very important. Remember, they have come to help and protect you. Try not to take your frustrations towards your partner out on the police. If you scream obscenities or if you appear intoxicated, you will not get as much cooperation.

Even if you are not visibly injured, the police will be able to see that your partner has assaulted you in other ways. They are trained to notice if you or your children are frightened or have been crying, if your hair is messed, your clothes dishevelled, or your house is in disarray.

B. ACTIONS THE POLICE CAN TAKE

There are a variety of possible police actions.

1) Charging Your Partner with "Assault", "Assault With A Weapon or Causing Bodily Harm", and "Aggravated Assault"

The London police will lay any one of these charges depending on how severe the assault and on whether you had any injuries as a result of the assault. If you do not have any visible injuries and the assault occurred before the police arrive, they may give you a yellow Victim Information Card and advise you to lay an assault charge yourself. If the police lay the charge your partner will likely be arrested and taken to the police station. In most cases he will be released either by the police or by a Justice of the Peace and will be required to appear in Court at a later date. Once released, your partner is free to return home.

The police in London are required to lay a charge if they have reasonable and probable grounds to believe that an assault has occurred. Once the police lay a charge, they will not withdraw it and both you and your partner will have to appear in Court.

2) Arresting Your Partner for "Breach of the Peace"

In London, if the police decide not to charge your partner, sometimes they will arrest him for "Breach of the Peace". In cases where the police have not seen the assault, they still have the right to arrest your partner if they have reasonable grounds to believe that he will assault you again once they leave. The police make this decision based on what they see, what you and your partner have told them, and on the other factors such as whether your partner is intoxicated or still acting abusive toward you or the police. Your partner will be taken into custody for the night or for as long as it takes him to sober up. Then he will be released and is free to return home. The police see this measure as a way to stop the violence, remove the immediate danger and allow your husband to cool down while being aware that his behaviour is unacceptable. The police will probably not press further charges against him once he is released.

3) What Other Charges Can Be Laid?

Unless the police charge your partner with Assault, Assault With a Weapon or Causing Bodily Harm, or Aggravated Assault, or arrest him for Breach of the Peace, it is not likely that other charges will be laid. Instead, it will be up to you to lay charges yourself. See Section II, The Criminal Justice System, p. 27.

However, there are additional criminal charges which the police may use in serious cases. These are listed and described in Appendix A.

4) Calling in the Family Consultants

The Family Consultants are social service professionals who intervene in domestic disputes at the request of the police. If the police feel that you or your partner would benefit by talking out your problems with a third party, and if you consent to this, the police will summon the Family Consultants.

Family Consultants are not police officers. They are social service workers who assist in crisis-intervention with family disputes. A Family Consultant is available to visit you in your home from 9:00 in the morning to 4:00 in the morning. Phone 438-3291. He or she will talk to you about your problems, offer advice, arrange referrals to social agencies if necessary, or find you temporary shelter and provide transportation to a place where you can spend the night. This service is unique to London.

5) Removing One Person from the Home

The police may try to resolve the situation by persuading you or your partner to leave your home and spend the night somewhere else. However, you or your partner have the right to refuse to leave. No one can be forced to leave against his/her will unless an arrest is made.

If you decide to leave, ask the police to stay with you until you pack your clothes and leave, or until a friend, relative, social agency or taxi arrives to pick you up.

C. YOU MAY DECIDE TO LEAVE RIGHT AWAY

What should you take with you?

You should pack a suitcase with some of your clothes and other necessary belongings. Take your house keys, bank book, charge cards, medications, and other personal identification with you. You will then be able to stay away for several days if necessary. Packing a suitcase will have great psychological impact on your partner as well. It demonstrates that you are serious in your refusal to tolerate his behavior and that you are not as dependant on him as he may think.

If you decide a few days later that you do not wish to return home, the London police will, at your request, accompany you back to your home and ensure that your partner does not harm you while you remove the remainder of your personal belongings. Telephone the Family Consultants to arrange this: 438-3291.

You will not be able to remove anything that you *clearly* do not own. This means that while you can safely take your clothes and your children's clothes if they are staying with you, you will not be able to remove any furniture or household items. If there is a dispute between you and your partner as to what you own, you may have to wait to resolve it between lawyers. Remember, the police will not help you carry out your personal effects. They will just stand by as keepers of the peace.

Should you take your children?

You have every right to take your children with you. In fact, if you decide to leave your home, it is often a good idea to take the children. Should you later decide to separate from your partner, you will be in a much stronger position when you apply for custody of the children. The person who has the children with them physically has the strongest chance of getting custody. See Section III, Family Law, p. 14 below.

Even if you cannot take your children with you at first, but think you will want to retain custody of them, try to return for them as soon as possible. You are jeopardizing your custody rights by leaving the children with your partner.

Where can you go?

If you do not have a friend or relative to stay with and cannot afford a motel, there are shelters in London which will accommodate you. Start by phoning the Women's Community House. They can advise you about where you can go. (Even if you do not want to stay there, you can phone them at any time for information and advice.)

1) Women's Community House (439-4543)

This shelter was set up specifically to accommodate battered women and their children. The house has room for a total of 10 women and children. Food, clothing, and childcare assistance are provided, and you are expected to share in household tasks.

The staff will provide you with information, moral support, and more important, the time to rest and consider whether you wish to go back to your home or to live independently from your partner. You may stay there for up to 6 weeks while you find somewhere to live.

If the Women's Community House cannot provide you with accomodation, it will refer you to other shelters in London.

2) Mission Services – Family Apartments (433-2807)

Mission Services provides rooms and an apartment as emergency housing for families in need. The average maximum stay is 5 days. Food is provided but you are expected to use this time period to find permanent housing.

3) Rothoime (438-4651)

This residence provides accomodation for women alone.

4) Merrymount (434-6848)

This is an emergency residence for children from 1½ years to 12 years of age. They will take in children 24 hours a day.

II. THE CRIMINAL JUSTICE SYSTEM

PRESERVING EVIDENCE

What types of evidence should you try to preserve?

You should preserve any evidence of the assault. If your clothes are blood-stained or torn, point this out to the police and ask them to note this in their report. Do not wash or mend the clothes as they are important evidence should any charges be laid. You should also preserve other evidence, such as any weapon your partner has used against you.

Get medical attention and photographs taken

If you have been injured, get medical attention *as soon as possible*. It is generally better if you go to your Family Doctor rather than to the Emergency Ward of a hospital. Make sure the Doctor who examines you writes out a report. The report will be important evidence later.

It is helpful to have photographs taken of your injuries (colour photographs may be the most helpful). You should ask the police to take these photographs and include them in their report.

Write down what happened

It is a good idea to write down what happened. Written notes will help refresh your memory should you have to testify about the assault at a later date. For example, if your partner is charged with assault, or if you apply for a divorce on the grounds of cruelty, these notes will be extremely helpful.

Three things are important to remember. First, make your notes as soon as possible while all the facts are still fresh in your mind. Second, *be accurate*. Finally, if you remember an important detail that you forgot to mention to the police, it is a good idea to contact the police officer who took down your story, so that this fact can be included in the police report.

B. CHARGING

Do the police always lay charges for you?

No. They will not usually lay charges if there are no visible marks of violence on your person or if the police feel that your injuries are not serious. Instead, it will be up to you to lay your own criminal complaint by going before a Justice of the Peace. The police should instruct you to do this, and how to go about it. If they don't, be sure you ask.

If you decide to lay a charge yourself, it is important that you do so *as soon as possible* after the assault. Charges can be laid even if you decide to stay living with your partner.

Do you need a lawyer to lay a charge?

No. You do it on your own.

Does it cost anything?

No. Everything that the Justice of the Peace (J.P.), the police, and the Crown Attorney will do is already paid for by the taxpayer.

How do you lay a charge?

To lay a charge in London, you go to the Court House at the corner of Ridout Street and Queens Avenue and see a Justice of the Peace on the second floor.

Who do you see to have a charge laid?

If you are married or part of a family setting, you will see a "J.P." from the Family Court — Mrs. Yokum or Mr. Murphy (679-7090). If you live common law with your partner, and you have no children, then you will see Mrs. Doerr or Mrs. Revenboerr, both "J.P.'s" from the Criminal court (679-7060).

You must make appointments to see the J.P. from Criminal Court, but the J.P. from Family Court will see you during office hours without an appointment. Take your written notes about the assault with you when you go to see the J.P.

What does a J.P. do?

The J.P. will listen to your story and will help you decide what you should do – whether you should or should not lay a charge. If you do decide to lay a charge, the J.P. will help you decide which one is appropriate. Most often they will suggest a "Common Assault" charge or a "Fearing" charge. You will also be told that once a charge is laid, it is not your responsibility anymore, and you cannot withdraw it.

The J.P. may advise you to wait a day or so and think it over, but the delay is not necessary if you insist. You should be aware that it might take a long time (up to three months) before your case gets to Court.

Multiple charges can also be laid. Your partner may have assaulted you a number of times in the recent past. Charges can be laid for each of these assaults going back 6 months from the day you lay the charge.

Common Assault Charges

The most frequent privately-laid charge is "Common Assault". Your partner commits the criminal offence of Common Assault in any case where he threatens you with violence or where he acts violently towards you, against your will, usually by applying force.

The police have the power to lay this charge themselves, but are reluctant to do so. They prefer you lay the charge as a private citizen. The chances of success in Court are generally higher when the police lay the charge themselves. So it is always better to try to convince the police to lay this charge, if you can.

Fearing Charges

The other option, apart from a Common Assault charge, is a "Fearing" charge. If you are scared that your partner will injure you or your children, you may go before a Justice of the Peace and ask that your partner be required to sign a Peace Bond. This is like signing a contract to keep the peace.

Before you can get a Peace Bond, you will have to go to Court and satisfy the judge that your fears are well-founded. Many women are confused and think that they can get a Peace Bond just by applying for it. This is not true. Unless your partner agrees of his own accord to sign a Peace Bond, you must go through a trial to convince the judge that he should issue a Peace Bond.

What effect does a "Common Assault" charge have?

When your partner is charged with common assault, he has the choice to plead "Guilty" or "Not Guilty". If he pleads "Guilty", he will likely do so at his "First Appearance". If he pleads "Not Guilty", there will be a trial. If he is found guilty at trial, he will have a criminal offence on his record.

What effect does a "Fearing" charge have?

A Fearing charge is different from an ordinary offence. It need not be shown that a criminal offence *has* occurred. You only have to show that one is *likely* to occur. Once you convince the judge of this, he will require your partner to sign a Peace Bond. The only time a Peace Bond will result in the commission of a criminal offence is if your partner breaches its terms and you report it.

If you and the J.P. decide that a Peace Bond would be most effective for your situation, then, as with any charge, a "First Appearance" will be arranged. The more urgent your situation, the more quickly the First Appearance will be scheduled. Your partner may plead "Guilty" at this appearance, which means that he consents to the terms of a Peace Bond. In this case, there will be no trial. There will only be a trial if your partner pleads "Not Guilty". At the trial you must satisfy the judge that your fears that your partner will strike you are well-founded.

A Peace Bond usually has terms ordering your partner to be of good behavior and to keep the peace for up to one year. If your partner breaches the orders (for example, by striking you), then he will only be arrested for breaching the Peace Bond if you report this to the police. *You must* let the police know if your partner breaches the Peace Bond. Otherwise it will have no effect at all.

Once you decide which charge to lay, then what happens?

Once you and the J.P. decide to lay a charge, and which charge to lay, the J.P. will fill out an "information" and will send it to the police. The J.P.'s secretary will make an appointment for you to see a police constable at the police station (601 Dundas Street, at Adelaide).

The police constable will take a detailed report and this will be sent to the Crown Attorney's office. The Crown Attorney is responsible for prosecuting the charge.

Will your partner be arrested?

No. Your partner will be served with a "Summons". This will indicate when he must appear in Court for his "First Appearance". At his first appearance he will plead either "Guilty" or "Not Guilty". If your partner pleads guilty there will be no trial. If he pleads not guilty, then there will be a trial. At the trial, the charge will have to be proven beyond a reasonable doubt before your partner will be convicted.

C. THE TRIAL

Do you go to Court for your partner's First Appearance?

The J.P. can tell you when your partner is scheduled to have his first appearance in Court. Although *you* don't *have* to go to Court on this day, it is a good idea. It will help to familiarize you with the Courtroom setting, and if there are any mistakes on the "information", you can help correct them.

If your partner, "the accused", pleads guilty to the charge, there will be no trial after the first appearance. If you want to know what your partner has been ordered to do if he pleads guilty, then you can find out if you attend in Court for the first appearance.

How long does it take?

After there has been an information laid, then the first appearance in Court is about three weeks later. (In urgent situations, they try to speed this up.) If there is going to be trial (that is, if your partner pleads not guilty), then you can expect about a two to three month wait until your trial. Sometimes there will be other adjournments which means a longer delay. This delay may be extremely frustrating to you, but it is important to stick with it.

Can you withdraw a charge once it has been laid?

Generally not, even if you laid the charge, and not the police. You cannot have it withdrawn in most instances. You may feel that it should be your choice, but with a criminal charge once the charge has been laid, the Crown Attorney is responsible for it. Whether you change your mind or not, once a charge has been laid, then it will be processed through the system. This is a policy which has been adopted by the London Crown Attorney's Office.

What does the Crown Attorney do?

The Crown Attorney will look at the information and the police report and will issue "Subpoenaes" to witnesses he or she would like to have in Court on the day of trial. A subpoena is an order that says you *must* appear in Court. You will receive one, and so might anybody else who witnessed your beating (neighbours, for example). Tell the Crown Attorney about any witnesses who saw the assault.

The Crown Attorney might want to see you before the trial to find out more about your case. You might want to make a point of talking to the Crown Attorney to be sure he/she is familiar with your case. Their office is in the Court House at the corner of Ridout and Queens Avenue, on the main floor. Phone 679-7130. Always keep the Crown Attorney informed of any change of address you may have.

Which Court will your trial take place in?

There are two different courts that your trial might take place in. The J.P. will decide which one is best, the Criminal Division or the Family Division.

What is the difference between the Family Division Court and the Criminal Division Court?

There are not very many spectators in the Family Court and there is no newspaper reporter. The judge in the Family Court has more experience in dealing with family problems. The courtroom is a little less formal.

The Criminal Division Court is less personal than the Family Court. There are many cases tried in one day, and many people constantly coming in and out of the courtroom. The judges have more expertise in dealing with serious crimes.

You are allowed to go to the Court House and see the courtrooms before the trial or first appearance if you want to.

What should you do the day of the trial?

Your job is to obey the subpoena and show up in Court to testify when the Crown Attorney asks you to take the stand. Your testimony is very important to the case. At trial, all evidence you give must be under oath. You must swear that what you tell the judge is not a fabricated story, but the whole truth.

What do you say?

The Crown Attorney will ask you questions about the incident that you complained about in the information.

The trial is only about the particular incident described in the charge. You can't talk about previous beatings, and this may be frustrating for you.

The trial proceeds as follows: first the Crown Attorney will call you, or any other witnesses to the stand. You will answer questions. Next your partner's lawyer, if he has one, will "cross-examine" you. This means he/she can ask you leading questions about the beating and other relevant matters. Your partner's lawyer can also cross-examine the other witnesses.

After this, your partner's lawyer may call your partner, and any other witnesses they may have for the defence, to the stand. After these persons answer your partner's lawyer's questions, the Crown Attorney can "cross-examine" them.

Can you take a friend to court with you?

Yes. Sometimes it is very comforting to have a friend with you for emotional support.

Is there a day care centre at the Court House for your children?

Unfortunately, there is no day care centre at the Court House.

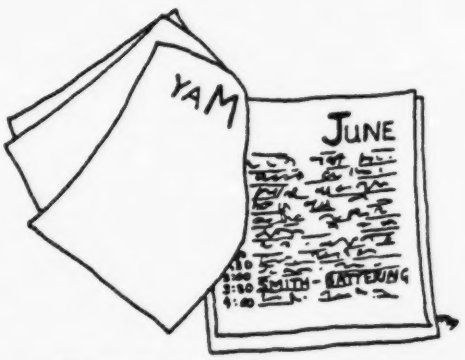
What happens if your partner is found "not guilty"?

It may happen that the judge will decide that you have not convinced him of your partner's guilt. Then your partner will be free to go. You should prepare yourself for this outcome.

Even if you don't get a conviction, going through the process is still worthwhile. You've still taken a stand. You've let your partner know you mean business. It is important for your own welfare and the welfare of your children to try to stop the abuse. Should he assault you again, you can lay charges again. Another time round and the judge may be more likely to convict.

What happens if your partner is found "guilty"?

There are a variety of sentences that a judge might hand out. The lightest is an "absolute discharge". If your partner is given an absolute discharge, he is free to go. Even though he has been found guilty, there will be no jail term, no fine, and the conviction won't appear on his record.



HOW TIME FLIES WHEN...

The judge can also give a "conditional discharge". This means that your partner must obey the "conditions" the judge sets out for the time period specified. (Sometimes judges hand out "conditional discharges" and fail to set out any conditions. To prevent this, you should be prepared to tell the judge and the Crown Attorney what conditions you would like to see him obey.) Conditions you might consider include:

1) that your partner not breach the peace,
2) that he not assault you or your children,
3) that he stay away from where you are living,
4) that he not attempt to contact you directly or indirectly,
5) that he provide financial support for you and your children, and
6) that he not possess a weapon.

Other sentences that can be handed out include a suspended sentence with a probation order. Probation orders can include requirements that your partner meet regularly with a probation officer and undergo counselling (e.g., with Alcoholics Anonymous).

Another alternative for the judge is to fine your partner or order him to do community work. If the crime is very severe, he may even be sent to jail. Jail can be served on weekends, if the judge orders this.

After you go through all the trouble of obtaining a criminal conviction, sentence is important to you. Think about what sentence you would like your partner to get. Don't be afraid to make suggestions to the Crown Attorney or to the judge as to what sentence you think would work best.

III. FAMILY LAW

A. IMMEDIATE HOUSING AND FINANCIAL ASSISTANCE

Before we turn to family law options, it is important to examine various sources of government financial assistance.

If you decide to leave your partner permanently, can you get financial assistance?

1) General Welfare Assistance

You can get a small amount of temporary financial assistance within 3 days by applying to the Social Services Division of the City of London. Phone 679-4520. A control worker will take down your name, address, phone number, and ask you questions about your income, if any, to determine initial eligibility. A case worker will then visit you in the next few days and complete a formal application. If your partner earns enough money to support you, you will not get General Welfare Assistance unless you can prove that you are not living with him.

Social Services will not provide any money toward first and last months' rent. They can only pay your present monthly expenses. You must provide the case worker with a note from your landlord which confirms that you live there and sets out the amount of your monthly rent. A cheque will then be issued immediately in the joint name of you and your landlord, covering at least the first two weeks of rent.

Can you get financial assistance while staying with relatives or friends?

In some cases, Social Services will issue you with money for food or lodging even if you are staying with relatives or friends.

Does income affect you ability to get assistance?

Generally, your family home and essential furniture and appliances will not affect your eligibility for financial assistance. Nor will Family Allowance. But any support payments you get from your partner and money in your bank account will be deducted, as well as most of any income you may have through employment, or unemployment and disability insurance. Your savings and any money you might get back from Income Tax will also be deducted.

How do you get welfare payments?

Cheques are mailed out to you every month. You do not have to pick up your payment.

IF IT'S THAT BAD, WHY DON'T THEY LEAVE RIGHT AWAY?

Is there any medical assistance?

You are entitled to free OHIP coverage while on assistance as well as a Drug Benefit Card which covers certain types of prescriptions. In addition, there is limited assistance if you need eyeglasses, dental care, or have other special needs. If you do not qualify for completely free OHIP, you may be entitled to partial premium assistance – i.e., you may only be required to pay part of the premiums. In addition, if you had previously been covered by your partner's OHIP, this coverage will stay in force for several months.

2) Long Term Assistance – Mother's Allowance

Mother's Allowance is long-term financial assistance provided if you are a mother raising children alone.

Who is eligible?

You must be widowed, divorced or deserted by your partner for at least 3 months to be eligible. You are considered deserted even if you have left the home because of your partner's acts of cruelty. You must, however, be living as a single person with your children. In addition, in order to qualify for Mother's Allowance, you must sue your husband for support.

How do you apply?

Sometimes your welfare worker will apply for you. If not, to apply for Mother's Allowance, phone 438-5111. You will be asked to answer questions over the phone to determine your initial eligibility. A field worker will then visit you in your home in about 3-4 weeks time to complete a more detailed application.

What if you have some income?

As with General Welfare Assistance, most, but not all, of your income is deducted from any assistance you may get. Support payments and pensions are also deducted but such things as your house and necessary furniture are not considered in determining your eligibility.

How are the payments made?

Again, cheques are mailed to you on a monthly basis.

Is there medical assistance?

Yes. Generally the same or similar benefits apply as under General Welfare Assistance. Complete or partial OHIP payments, some prescription drugs, eyeglasses, and some dental care.

How long will it take?

There is an average of 3-6 months delay until you are enrolled in Mother's Allowance. You may however qualify for General Welfare Assistance until that time.

3) Housing

The Ontario Housing Corporation runs a number of housing units for low-income families. Phone 679-7110 to find out how you qualify.

B. FAMILY LAW OPTIONS

If you have decided you wish to separate from your husband or common-law spouse, you should be aware of the alternatives available to you under *The Family Law Reform Act* and the *Divorce Act*. The following should be considered a general guide only. If you have any specific questions or wish to pursue any of the alternatives outlined, you should contact a lawyer.

How do you know which lawyer to call?

Lawyers are now listed in the Yellow Pages of the Telephone Book according to the areas of law which they prefer to practice. In London, 64 lawyers are listed as practising family law. A "lawyer-referral service" has been set up in Toronto which you can call toll-free at 1-800-268-8470.

If you know someone who has gone through a situation similar to yours, ask them to recommend a lawyer. You could also ask the staff at Women's Community House or a worker in a social agency you deal with to recommend someone, as they are familiar with lawyers who are sympathetic and knowledgeable about situations such as your own.

How much does a lawyer charge?

Lawyers' fees may vary dramatically, depending on the amount of time spent in preparing the case, the time spent in court, the expertise and experience of the lawyer, and the amount of property, if any, involved. An uncontested divorce usually costs around $650-675.

Don't let this prevent you from seeing a lawyer. Many lawyers will charge nothing, or only a minimal amount, for the first consultation. Check about this before you make an appointment. During this consultation the lawyer can assess your situation, advise you of your rights, and estimate the cost of the legal services needed.

What if you can't afford a lawyer?

If you are a resident of Ontario, you may be eligible for legal aid under the Ontario Legal Aid Plan. In order to apply, you must go to the office of the Area Director of Legal Aid, Mrs. Gretta Grant. The office is located at 121 Queens Avenue in London. The phone number is 433-8179. There you will fill out an application form and be interviewed by an assessment officer.

If you are on Welfare or Mother's Allowance, and can prove it by showing a cheque stub, for example, you will have a fairly easy time getting your application approved. If you are not on Welfare, the assessment officer will make the decision based on your income, any property you own, and any debts you may have. If you are still living with your partner, his income will be considered in assessing your financial situation.

In some cases, getting your application approved depends on what legal services you need. For example, Legal Aid is reluctant to grant assistance for persons seeking divorce unless they have been separated for six months.

Do you have to pay Legal Aid back?

You may be required to pay back Legal Aid, if the assessment officer feels you can afford to do so. They may require complete or partial repayment. Payments can be made on the installment plan. If you own property such as a house, a "lien" is automatically placed on it. This means that when you sell the house, part of the proceeds will automatically go to pay off the debt to Legal Aid.

What happens if your application is approved?

If your application is approved, you will receive a Legal Aid certificate which you can take to a lawyer of your choice. Some lawyers may not take these certificates, but most lawyers in London will. If the lawyer does not accept the certificate, he or she will help you find a lawyer who will.

If the matter is fairly simple, you may be referred to the London Legal Clinic (121 Queens Avenue: 679-6771) or Student Legal Aid at the University of Western Ontario (UWO Faculty of Law Building: 679-2818). Both are staffed by UWO law students who are supervised by lawyers and professors. There is no charge for these services.

If you go to see a lawyer, do you have to get a divorce?

No. A lawyer may encourage you to take certain steps but will by no means force you to start proceedings you do not wish to. Divorce may be something you wish to consider in the future.

It is *not* necessary to begin divorce proceedings in order to obtain support or to have the family property divided. An application can be brought to divide the family property where there is no reasonable prospect that you and your husband or common-law spouse will resume living together.

CUSTODY

If you have children, an even more pressing concern will be determining who has legal custody of the children.

How can you be sure you will be allowed to keep the children?

First of all, if you leave the family home you should take the children with you or return for them as quickly as possible. The parent who has the children living with them when an application to court is made is often awarded temporary custody and later favoured by the judge when deciding permanent custody. This is because judges don't want to move the children.

How does the judge decide about custody?

The judge will make the decision based on "the best interests of the child". This obviously encompasses a variety of factors. Before you go to court, make sure you have made long-range plans about housing, finances, day care, schooling, and recreation. You must convince the judge that your children are better off with you than with their father.

ACCESS

Unless the father is considered to be an unhealthy influence on the children, he is likely to be granted "access" or visiting rights. Unfortunately, this may be awkward and unpleasant for you. If you explain this to the judge, he or she may make special arrangements. For example, the visits could be required to take place at a relative's house, or after several days' notice. Please consult a lawyer before you deny your partner access to the children.

How can you get your husband to stop bothering you without laying a criminal charge?

You can apply for a court order under *The Family Law Reform Act* restraining your husband or common-law spouse from "molesting, annoying, or harassing" you or the children in your lawful custody. Unfortunately, this provision is seen as having limited effect by most family lawyers. Restraining orders under this Act are enforced by the sheriff rather than by the police. The sheriff is not available at night or on short notice. Most family lawyers find it more effective to have you lay criminal charges under the Criminal Code.

If you do obtain a restraining order, however, and your husband disobeys it, the sheriff will enforce it. Your partner can be fined up to $1,000 in Family Court, or imprisoned for ninety days for contempt of court. The courts, however, are reluctant to charge people with contempt under this provision and are even less likely to impose stiff sentences or heavy fines.

SUPPORT

Is your husband obliged to support you and the children after you leave him?

The general rule is that spouses are obliged to support themselves. But if you can show that you are in need of financial support and that your spouse can afford it, he may be ordered to make support payments to you. In almost all cases he will be ordered to make payments to help support the children.

Do you have to be married in order to receive support for yourself?

For support purposes, "spouse" has an extended definition and includes some "common-law" spouses. If you have lived together continuously for five years, you will be included. Also if you have lived together "in a relationship of some permanence" and had a child, you will be included.

In either case, you must apply for support *within a year* after you have stopped living together.

How does the judge decide how much your spouse should be ordered to pay?

The judge will look at a number of factors. These include your property and your spouse's property, your capacity to support yourself, his capacity to provide support, the age and health of both of you, the length of time you lived together, and your needs. The judge will also look at your spouse's obligation to support someone else (i.e., children from a previous marriage, a new wife), whether it is desirable for you to stay at home in order to care for the children, your contribution to your spouse's career potential, and the time and money necessary for you to become financially independent. Keep all bills, tax receipts, and other evidence of your financial needs.

Can he be ordered to pay you more money because of the beatings?

Your conduct or your spouse's conduct will not be considered by the judge in determining support unless it was an "obvious and gross repudiation of the relationship." This is not to say, however, that a judge will not be influenced if he or she feels that your spouse has acted in a brutal manner or that your behavior has been in some way immoral or particularly unreasonable.

How often do you receive payments?

The judge may order monthly or weekly payments either indefinitely or for a specified length of time. Alternatively, he or she may order one large payment or a transfer of property. You can apply for a change in the amount of money paid if your circumstances or your spouse's circumstances change substantially. You may wish to apply for increased support if, for example, you lose your job and can't find a new one, or the children need more money as they get older.

Where is the application made?

Your application for support should be made to either the Provincial Court (Family Division), County Court, or Supreme Court. Provincial Court is less expensive and less formal but cannot hear cases involving a dividing up of the family property. County Court is more expensive and you will need a lawyer but the advantage is that you can bring an application for support and a dividing up of the property at the same time.

PROPERTY

Can you have your husband removed from the home so that you can return with the children?

Even if the house is in your husband's name, you can apply for "exclusive possession of the matrimonial home". The "matrimonial home" is the family residence and includes an apartment or condominium as well as a house. The judge will only make such an order, however, if there is no other suitable place for you to live or it is in the best interests of a child to live in the home.

Apparently it is much easier to obtain such an order if you remain in the home. Once you have moved out and found alternate accommodation (other than emergency shelter) you may have difficulty succeeding even though the children may be better off in the family home. Sadly, it is not always possible for you to stay in the home, especially if your husband is beating you constantly.

Can you get half the house and car even though they are in his name?

Yes, if you are married. (If you are living common law, consult a lawyer regarding your property rights.) First, let's define "family assets". They are those assets owned by one or both spouses and ordinarily used by the spouses or the children for certain purposes. These include shelter, transportation and household, educational, recreational, social or aesthetic purposes. Things like the house, car, cottage, stereo, appliances, and furniture would normally be included. A bank account, if the money is used for household or family purposes, would also be included.

How are these assets divided?

The general rule is that upon marriage breakdown, both spouses have an equal right to share in family assets regardless of which spouse owns them. In order to get before the court, you must be able to show that you and your husband have separated and there is no reasonable chance you will get back together. Normally a court will order a fifty-fifty split, but if the judge feels this would be unfair after looking at a number of circumstances, family assets may be divided in unequal shares.

What circumstances would cause the judge to divide these assets in unequal shares?

The judge will look at such things as the length of the marriage, the length of the separation, the date the property was acquired, and whether you or your husband received the property through inheritance or gift.

What about your husband's business and investments?

In addition to "family assets", the judge may divide "non-family assets", (for example, the truck your husband uses for business purposes, his business investments, etc.), if it is felt that one spouse has "unreasonably impoverished" the family assets.

An example of this might be if your husband sold the family car and all the furniture after you left and used the money to purchase unnecessary equipment for his business. This can also be done if it is felt that the division of family assets is unfair because of factors outlined earlier. If your assumption of all the household and child care responsibilities enable him to acquire business assets, this will also be taken into account.

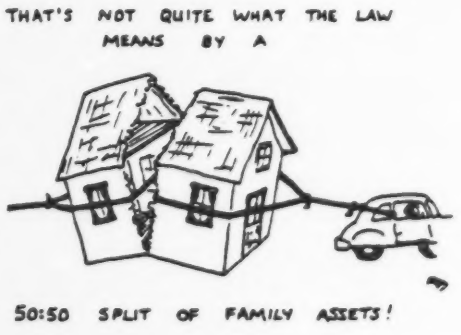
Does that mean you can go back and take half of the furniture and withdraw half of the money in the bank?

Not necessarily. Until your application comes before the court and a decision is made, a system of "separate property" prevails. During the marriage each spouse continues to own property acquired before the marriage. Property acquired during the marriage is owned by the spouse who paid for it or acquired it. *Not until you apply to court* for a division of these assets will you have any entitlement to property held in his name.

If you have contributed to a joint bank account, you have the right to withdraw reasonable amounts. When you are considering taking property from the house, keep in mind that a court is likely to grant a 50/50 split.

What can you do if your spouse starts disposing of these assets before the court makes its decision?

Some spouses try to get around paying you support or dividing property equally by selling, giving away, or destroying some of the property you are entitled to. If this is a problem for you, you can have your lawyer apply immediately for an order restraining your husband from doing this prior to the final court decision. (sections 9 and 22 of *The Family Law Reform Act*).



Can you settle all these issues without going to court?

If you and your spouse agree as to how you will divide the property if you separate, and how much support will be paid, you can enter into a domestic contract. These can take the form of marriage contracts, cohabitation agreements, or separation agreements. They must be in writing, signed by you and your spouse, and witnessed.

There is no such thing as a "legal separation". Separation agreements are merely voluntary agreements reached between two persons, setting out the terms upon which they wish to separate. Separation agreements can also provide who shall have custody of the children. However, a judge can disregard this if he or she feels it is in the best interests of the children to do so. Similarly, any agreement you make in any contract as to the payment of support can be set aside by the judge if he or she feels it is unfair or if it results in one spouse having to go on welfare.

In these agreements, you can also state what you want done with the family home. However, even if you have this type of provision in your contract, neither spouse can agree to give up any rights under Part III of *The Family Law Reform Act* to occupation of the family home. In addition, neither spouse can sell or dispose of the family home without the consent of the other spouse. Any agreement to the contrary is of no effect.

DIVORCE

Do you have grounds for divorce?

To get a divorce, you can use the "fault grounds" or the "marriage breakdown" situation.

1) Fault Grounds

There are a number of "fault grounds" for divorce. These include, for example, that he has committed adultery, that he is grossly addicted to alcohol or narcotics, that he has spent a certain amount of time in prison, or that he is guilty of "cruelty" toward you. There are other "fault" grounds for divorce, but the ground of "cruelty" is of particular interest to battered women.

If you apply for divorce on the ground of cruelty and can prove that your husband treated you with such mental or physical cruelty that living together became intolerable, you may be granted a divorce right away. What kind of conduct is considered "cruel" may vary from one judge to another. You must prove not only that your partner was cruel, but that this had a substantial effect on you. You will need evidence from friends, medical evidence, evidence from your doctor, etc.

You may not be granted a divorce on the ground of cruelty if the judge determines you have "condoned" the conduct complained of. Condonation means forgiving your husband and reconciling with him. An act of consenting sexual intercourse may have the effect of "wiping out" an earlier beating as a ground of "cruelty". Obviously, if your husband has forced you to submit to this intercourse, it will not amount to condonation.

Unfortunately, if your husband has you so terrified that you submit without a struggle, you may have difficulty proving to a judge that you did not consent. (This is a problem battered women share with many rape victims.) If you are still living with your husband, this may also amount to condonation, as the judge will conclude that the cruelty can't be as bad as you make out if you are still there. (This type of thinking often ignores the few options available to battered women who wish to leave.) However, even if the judge decides you have "condoned" the cruelty, he can decide to grant the divorce anyway if he thinks that it would be in the public interest to do so.

2) Marriage Breakdown Situations

The helpful aspects of obtaining a divorce by the "fault" grounds is that you get the divorce right away. If you can't prove "fault", for example, if you think you may have difficulty proving that he beat you or if you think you may have condoned it according to the definition, you are left only with the "marriage breakdown" situation. In this case, you file for divorce on the basis that the marriage has permanently broken down.

To succeed, you need only prove that you have been living separate and apart from your husband for the three years immediately preceding the application for divorce. As a result, you cannot obtain divorce immediately upon separation, but must wait three years. You may have to wait even longer if the judge decides you "deserted" your husband.

What is desertion?

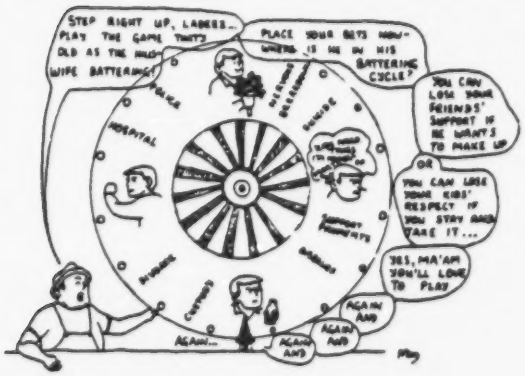
Desertion in this situation means leaving your husband without his consent and *without justification*. Even if you are the one that walked out the door, you will not be considered a "deserter" if your husband's conduct was the real reason for the marriage breakdown. *He* will be considered the deserter if his conduct was so bad that you were forced to leave. If you are considered a "deserter", you must wait a total of five years from separation before applying for divorce.

You may also have difficulty if, during your separation, you and your husband have tried to get back together several times. If you resumed living together or even engaged in consenting sexual intercourse, this may have the effect of interrupting or terminating the period of separation. If this happens, you have to start counting the years all over again. However, if you get back together for a single period of less than ninety days, this will not interrupt the separation. Nevertheless, engaging in consenting sexual intercourse on a number of separate occasions may have this effect.

What is your next move?

Your next move is up to you. The law is complicated and confusing at times but don't let that discourage you. After reading the Handbook you should have a basic understanding of criminal and family law which will better equip you to make decisions in the weeks and months ahead.

Only a lawyer can properly advise you of your legal rights concerning family law. Only you can take advantage of them. The prospect of leaving your partner and being on your own may be frightening, but be assured that there will be others there to help you. Remember, you are not alone. You do have rights. You can choose to get court orders and to have them enforced. There are frustrations and delays with all legal proceedings. But even more frightening is the prospect of a lifetime of abuse. Decide wisely. You owe it to your children. You owe it to yourself.



APPENDIX A

In the Handbook we have listed the most common offences with which the police may charge your partner:

1) assault (s.245 of the Criminal Code);
2) assault with a weapon or causing bodily harm (s.245.1 of the Criminal Code);
3) aggravated assault (s.245.2 of the Criminal Code);
4) breach of the peace (s.30 & 31 of the Criminal Code).

In addition we have described the "fearing" charge (s.745 of the Criminal Code) which is most often laid by the women themselves against a violent partner.

There are other offences that may apply in some cases.

1) *Sexual Assault*, s.246.1 Criminal Code

2) *Sexual Assault With A Weapon, Threats To A Third Party or Causing Bodily Harm*, s.246.2 Criminal Code

3) *Agravated Sexual Assault*, s.246.3 Criminal Code

4) *Wounding*, s.228 Criminal Code
Anyone who injures you or dischages a firearm, air pistol or air gun, if he does so *intending* to endanger your life or to wound, disfigure or maim you, can be charged with this offence.

5) *Administering A Noxious Thing*, s.229 Criminal Code
It is a criminal offence to poison or make anyone take a noxious or destructive thing whether the intent is simply to annoy the person or to injure them seriously.

6) *Point a Firearm*, s.84 Criminal code
It is a criminal offence to point a firearm at someone without lawful excuse (i.e., self-defence) even if the gun is unloaded. It is also unlawful to handle a firearm carelessly.

7) *Possession of a Weapon*, s.85 Criminal Code
It is a criminal offence to carry or use a weapon in a way that is dangerous to the public peace, or for an unlawful purpose such as assaulting someone. The definition of "weapon" is very broad. For example, a beer bottle thrown at you is considered to be a weapon.

8) *Intimidation*, s.381 Criminal Code
A person intimidates you when they use threats, violence, or tactics such as following you about, watching your house or hiding your property for the purpose of getting you to do something or not to do something that you would otherwise have done.

9) *Extortion*, s.305 Criminal Code
Anyone who uses threats or violence to try to make you do something for their own gain may be charged with this offence. For example, your partner may be charged with extortion if he threatens to beat you unless you turn over your paycheque to him.

10) *Threatening Letters & Phone Calls*, s.331 Criminal Code
If your partner writes or phones you or sends any message which is intended to threaten you, your property, even your pet, with death or harm, he may be charged with this offence.

11) *Mischief*, s.387 Criminal Code
Mischief can be committed in many ways, the most common being by destroying, damaging or interfering with the use of property.

12) *Attempted Murder*, s.222 & s.24, Criminal Code
Anyone who tries to kill you or harms you in a way that he knows is likely to cause death and is reckless about whether or not you might die, may be charged with attempted murder.

IMPORTANT ADDRESSES AND PHONE NUMBERS

Police

601 Dundas Street	
Emergency	911
Family Consultants	438-3291

Courthouse

Ridout Street & Queens Avenue	
Provincial Court (Criminal Division)	679-7060
(Family Division)	679-7090
Information	679-7000
Justice of the Peace	
(Crim. Div'n)	679-7060
(Family Div'n)	679-7090
Crown Attorney	679-7130

Counselling Services

Battered Women's Advocacy Clinic	434-7321
399 Ridout Street, North	extension 29
Toll Free Number	1-800-265-5939

Legal Services

Ontario Legal Aid, 121 Queens Avenue	433-8179
Lawyer Referral Services – toll-free	1-800-268-8326
London Legal Clinic, 121 Queens Avenue	679-6771
Student Legal Aid Society (U.W.O. Campus)	679-2818

Shelters

Women's Community House, 267 Piccadilly	439-4543
Mission Services Office	433-2807
Family Services, 42 Stanley St.	433-0641
Rothoime, 44 Wortley	438-4651
Merrymount Children's Home, 930 Richmond	434-6848

Government Agencies

Family & Children's Services,	
164 Albert St.	434-8461
Family Counseling Centre, 90 Albert St.	433-0183
Family Benefits, Mother's Allowance	438-5111
General Welfare Assistance	679-4520
Ontario Housing Corporation,	
80 Dundas St.	679-7110
Information London	432-2211

PAMPHLET FINAL PAGE

VICTIM NAME:

ADDRESS:

PHONE:

DATE:

Contact Point: Name of Officer:

J.P.:

Social Worker:

Address:

Division & Badge No.:

Court:

Phone:

Action Recommended:

3-Part Form

Copy 1 -- Victim
Copy 2 -- Contact Point
Copy 3 -- Researcher

APPENDIX D

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ACCESS TO COURT PROCEEDINGS

APPENDIX D

ACCESS OF COURT PROCEEDINGS

- Access of **criminal court** proceedings be handled by one of the following options:

  Criminal Court Access Option 1

  - Court calendar prepared by the MTPF division is clearly marked spousal abuse by a flagging mechanism — red sticker or "X", for example.

    Provincial court staff are requested to continue to flag spousal abuse cases when preparing daily court calendars.

    When copies of the daily disposition of cases on the court docket are made, an additional copy is forwarded to the researcher.

  Criminal Court Access Option 2

  - The dope sheet is clearly marked to flag a spousal abuse case.

    The Court Liaison Officer is asked to match flagged dope sheets to the court calendar, and mark off the appropriate cases on the court calendar.

    The Court Liaison Officer is asked to record the disposition of the cases on the court calendar, and forward a copy to the researcher.

- Access to **family court** proceedings be handled by the following course of action:

  - Intake forms be revised to flag spousal abuse cases.

  - The scheduling clerk subsequently flags files that are Domestic "spousal abuse" cases by attaching a red sticker to the side of the file. A "D" sticker is now affixed to the folder to denote a domestic.

- The scheduling clerk for domestic court days flags the spousal abuse cases. After the dispositions are entered on the court docket by the court attendant, a copy of the docket is sent to the researcher.

- The researcher matches the cases marked on the court docket to the list provided by the Records Bureau.

A sample Criminal Court docket is found in Appendix E.

A sample Family Court docket is found in Appendix F.

APPENDIX E

CRIMINAL COURT DOCKET

PROVINCIAL COURT DOCKET

METROPOLITAN TORONTO

CROWN ATTORNEY _____

COURT REPORTER _____

COURT CLERK _____

DATE _____ _____ COURT { A.M. / P.M. } PAGE NO. _____ PRESIDING JUDGE _____

FOR ACCOUNTING PURPOSES ONLY														DISPOSITION		
PROVINCIAL TREASURER $ ¢	MUNICIPALITY $ ¢	FEDERAL GOVERNMENT $ ¢	OTHER PERSONS $ ¢	COMMITTED IN DEFAULT $ ¢	TIME GIVEN TO PAY $ ¢	COMPLAINANT	CONSTABLE	DATE OF ARREST DAY DAY MO	AGE	OFFENCE	DEFENDANT	PENALTY $ ¢	COSTS $ ¢			
						1					1					
						2					2					
						3					3					
						4					4					
						5					5					
						6					6					
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						30					30					

APPENDIX F

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FAMILY COURT DOCKET

Ministry of the Attorney General

Provincial Court (Family Division)

COURT DOCKET

Date	Court Location	Court Time	Start	End	Elapsed
Room No	Crown	Recess Time		Sitting Time	
Duty Counsel	Court Reporter	Judge		Courtroom Clerk	Page

Line No.	New or Adj.	File No	Applicant/Respondent / Complainant/Defendant	Counsel	Statute/ Proceeding	Date Court dealt with case	Disposition
1			A R				
2			A R				
3			A R				
4			A R				
5			A R				
6			A R				
7			A R				
8			A R				
9			A R				
10			A R				
11			A R				
12			A R				
13			A R				
14			A R				
15			A R				
16			A R				

Date _____

FD 035 (12.79)

APPENDIX G

"DOPE SHEET"

(FRONT)

Ministry of the Attorney General

Supervisor's Initials and Date Checked

Confidential Instructions for Crown Counsel

File Name *(No. 1 accused only)*

COURT .....

ACCUSED	AGE	ADDRESS	IF PREV. RECORD CHECK WITH √		Criminal Record No.	RECORD ENCLOSED BY BADGE No.	PLEA	BAIL AMOUNT AND CONDITIONS	JUDGEMENT OR SENTENCE
1.									
2.									
3.									
4.									
5.									
6.									

Proceed summarily - Indictment – Indicate with S or I
Copy(ies) of cautioned statement(s) enclosed

CHARGE(S)

1. .....
2. .....
3. .....
4. .....
5. .....
6. .....

To be completed by Crown on Charge sheet

To be completed by Court Registry

Property involved in Charge (general description) .....

.....

.....

Photographs of victim YES ☐ NO ☐
Photographs of property/scene YES ☐ NO ☐

CA 017 (1/81)

WARRANT	PROV. OFF. TICKET	ARREST	APPEARANCE NOTICE	SUMMONS
☐	☐	☐	☐	☐

Date of Offence ..... Date of Arrest .....

Occurrence Number .....

Officer i/c Case .....

Unit .....

Judge .....

Crown .....

1 Defence Counsel ..... Telephone No. .....

2 Defence Counsel ..... Telephone No. .....

3 Defence Counsel ..... Telephone No. .....

4 Defence Counsel ..... Telephone No. .....

5 Defence Counsel ..... Telephone No. .....

6 Defence Counsel ..... Telephone No. .....

Hickling-Johnston

(BACK)

ENSURE THAT ALL RELEVANT DOCUMENTS ARE ENCLOSED TO ENABLE THE CROWN'S OFFICE TO DETERMINE IF A LESSER CHARGE SHOULD BE LAID AND/OR FULL DISCLOSURE CAN BE COMPLETED

COURT DATES	STATUS	REMARKS

WITNESSES

NAME (include status i.e. victim)	STATEMENT TAKEN Yes	STATEMENT TAKEN No	ADDRESS	POSTAL CODE	HOME TELE.	BUS. TELE.	VACATION(s)
	✓						

WITNESS SHEET SUBMITTED BY ..... DATE ..... RECORDED AT IDENTIFICATION BUREAU BY ..... DATE .....

Hickling-Johnston